रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05

REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 45] नई दिल्ली, नवम्बर 4—नवम्बर 10, 2012, शनिवार/कार्तिक 13—कार्तिक 19, 1934
No. 45] NEW DELHI, NOVEMBER 4—NOVEMBER 10, 2012, SATURDAY/KARTIKA 13—KARTIKA 19, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 अक्तूबर, 2012

का.आ. 3335.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राजस्थान राज्य सरकार, गृह (जीआर. V) विभाग, जयपुर की दिनांक 12 जून, 2012 की अधिसूचना सं. एफ. 19(24) गृह-5/2012 द्वारा प्राप्त सहमति से पुलिस स्टेशन सिंघाना, जिला, झुन्झुनु (राजस्थान) में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 363 और 366 के अधीन दिनांक 20-04-2011 को पंजीकृत मामला सं. 98/11 तथा उपर्युक्त उल्लिखित अपराधों के संबंध में या उनसे संबद्ध प्रयासों, दुष्प्रेरणाओं तथा षड्यंत्रों तथा उसी संव्यवहार में किया गया कोई अपराध या अपराधों का या उन्हीं तथ्यों से उत्पन्न अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों तथा क्षेत्राधिकार का विस्तार सम्पूर्ण राजस्थान राज्य के संबंध में करती है ।

[फा. सं. 228/41/2012-एवीडी-II]

एम.पी. रामा राव, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 31st October, 2012

S.O. 3335.—.In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Rajasthan, Home (Gr. V) Department, Jaipur vide Notification No. F. 19(24) Home-5/2012 dated 12th June, 2012, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Rajasthan for investigation of Case Nos. 98/11 dated 20-04-2011 under Section 363 and 366 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Singhana, District Jhunjhunu (Rajasthan) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 228/41/2012-AVD-II]

M. P. RAMA RAO, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 अक्तूबर, 2012

का. आ. 3336.—भारतीय लघु उद्योग विकास बैंक अधिनियम,1989 (1989 का 39) की धारा 6 की उप-धारा (1) के खंड (ङ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री टी. सत्यनारायण राव, प्रबंध निदेशक, आंध्र प्रदेश राज्य वित्त निगम (एपीएसएफसी) को 11-05-2014 तक अथवा अगले आदेश होने तक, इनमें से जो भी पहले हो, भारतीय लघु उद्योग विकास बैंक (सिडबी) के निदेशक मण्डल में श्री विकास राज, पूर्व प्रबंध निदेशक, एपीएसएफसी के स्थान पर अंशकालिक गैर-सरकारी निदेशक के रूप में नियुक्त करती है ।

[फा. सं. 24/5/2002-आईएफ-I/आईएफ-II]

रमण कुमार गौड़, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th October, 2012

S.O. 3336.— In exercise of the powers conferred by clause (e) of sub-section (1) of Section 6 of the Small Industries Development Bank of India Act, 1989 (39 of 1989), the Central Government hereby appoints Shri T. Satyanarayana Rao, Managing Director, Andhra Pradesh State Financial Corporation (APSFC), as part-time non-official Director on the Board of Small Industries and Development Bank of India (SIDBI), vice Shri Vikas Raj, former MD, APSFC, till 11-05-2014 or until further orders, whichever event occurs earliest.

[F. No. 24/5/2002-IF-I/IF-II]

RAMAN KUMAR GAUR, Under Secy.

नई दिल्ली, 5 नवम्बर, 2012

का.आ. 3337.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श के पश्चात् एतद्द्वारा, इंडियन बैंक के महाप्रबंधक श्री मलय मुखर्जी (जन्म तिथि: 26-07-1955) को उनके पदभार ग्रहण करने की तारीख से 31-07-2015 तक, अर्थात् उनके अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, सेन्ट्रल बैंक आफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है ।

[फा.सं. 4/5/2011-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th November, 2012

S.O. 3337.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Malay Mukherjee (DoB : 26-07-1955), General Manager, Indian Bank as Executive Director, Central Bank of India, with effect from the date of his taking over charge of the post till 31-07-2015, i.e. the date of his superannuation or until further orders, whichever is earlier.

[F. No. 4/5/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 नवम्बर, 2012

का.आ. 3338.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श के पश्चात्, एतद्द्वारा, सेन्ट्रल बैंक ऑफ इंडिया की कार्यपालक निदेशक श्रीमती वी.आर. अय्यर (जन्म तिथि: 01-06-1955) को उनके पदभार ग्रहण करने की तारीख से 31-05-2015 तक, अर्थात् उनके अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, बैंक ऑफ इंडिया के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है।

[फा. सं. 4/4/2011-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th November, 2012

S.O. 3338.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Smt. V. R. Iyer (DoB : 01-06-1955), Executive Director, Central Bank of India as Chairman and Managing Director, Bank of India for a period with effect from the date of her taking over the charge of the post till 31-05-2015, i.e. the date of her superannuation or until further orders, whichever is earlier.

[F. No. 4/4/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

राष्ट्रपति सचिवालय

नई दिल्ली, 26 अक्तूबर, 2012

का.आ. 3339.—केन्द्रीय सरकार सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 तथा तब के भारत के आवास एवं निर्माण मंत्रालय की अधिसूचना सं. का. आ. 720 दिनांक 10 मार्च, 1973 के अधिक्रमण में धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नीचे सारणी के स्तम्भ (1) में उल्लिखित अधिकारी को, जो सरकार के राजपत्रित अधिकारी हैं, उक्त अधिनियम के प्रयोजन के लिए संपदा अधिकारी नियुक्त करती है। यह अधिकारी उक्त सारणी के स्तम्भ (2) में तत्स्थानी प्रविष्टि में विनिर्दिष्ट सरकारी स्थानों के प्रवर्गों के संबंध में उक्त अधिनियम के द्वारा या उसके अधीन संपदा अधिकारियों को अपने क्षेत्राधिकार की स्थानीय सीमाओं में प्रदत्त शक्तियों का प्रयोग और उन पर अधिरोपित कर्त्तव्यों का पालन करेगा।

सारणी

अधिकारी पदनाम	सरकारी स्थानों के प्रवर्ग एवं क्षेत्राधिकारी की स्थानीय सीमाएं
(1)	(2)
जे.जी. सुब्रमणियन अवर सचिव राष्ट्रपति सचिवालय	स्थानों में नई दिल्ली, शिमला (हि.प्र.) देहरादून (उत्तरांचल) एवं बोलाराम, सिकंदराबाद (आं.प्र.) में स्थित राष्ट्रपति संपदा समाविष्ट है ।

[फा. सं. डी-11037/1/2012-ई.बी.ए.]

सौरभ विजय, निदेशक

PRESIDENT'S SECRETARIAT

New Delhi, the 26th October, 2012

S.O. 3339.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and in supersession of the then Government of India in the Ministry of Works and Housing Notification No. S.O. 720 dated the 10th March, 1973, the Central Government hereby appoints the Officer mentioned in column (1) of the Table below being a Gazetted Officer of the Government to be the Estate Officer for the purposes of the said Act who shall exercise the powers conferred and perform the duties imposed on Estate Officer by or under the said Act within local limits of his respective jurisdiction in respect of the public premises specified in corresponding entry in column (2) of the said table.

TABLE

Designation of the Officer and jurisdiction	Categories of Public Premises local limits of
(1)	(2)
Shri J.G. Subramanian President's Under Secretary President's Secretariat	Premises comprising the Estate in New Delhi, Shimla (Himachal Pradesh), Dehradun (Uttaranchal) and Bolarum, Secunderabad (Andhra pradesh)

[F.No. D-11037/1/2012-EBA]

SAURABH VIJAY, Director

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

नई दिल्ली, 6 जुलाई, 2012

का.आ 3340.—केन्द्रीय सरकार, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत चिकित्सा परिषद् से परामर्श करने के बाद, एतद्द्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है अर्थात्:—

2. "दत्ता मेघे आयुर्विज्ञान संस्थान (मानद विश्वविद्यालय), वर्धा" द्वारा प्रदत्त दंत चिकित्सा डिग्रियों की मान्यता के संबंध में दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में शरद पवार डेंटल कालेज एवं अस्पताल, वर्धा, महाराष्ट्र के संबंध में क्रम संख्या 80 के I के समक्ष कालम 2 एवं 3 की मौजूदा प्रविष्टियों में निम्नलिखित प्रविष्टियां अन्त:स्थापित की जाएंगी,

मास्टर ऑफ डेंटल सर्जरी

पैडोडोन्टिक्स एवं प्रीवेन्टिव डेन्टिस्ट्री (यदि 28-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो)	एमडीएस (पैडो.), दत्ता मेघे आयुर्विज्ञान संस्थान (मानद विश्वविद्यालय), वर्धा

[संख्या वी.-12017/47/2006-डी.ई.]

अनिता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 6th July, 2012

S.O. 3340.—In exercise of the powers conferred by sub-section (2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of columns 2 & 3 against I of Serial No. 80, in respect of Sharad Pawar Dental College & Hospital, Wardha, Maharashtra, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of MDS Degree awarded by Datta Meghe Institute of Medical Sciences (Deemed University), Wardha, the following entries shall be inserted thereunder:—

Master of Dental Surgery

Paedodontics and Preventive Dentistry (if granted on or after 28-04-2012)	MDS (Paedo.), Datta Meghe Institute of Medical Sciences (Deemed University), Wardha

[No. V-12017/47/2006-DE]

ANITA TRIPATHI, Under Secy.

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 27 जुलाई, 2012

का.आ.3341.—केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2)

द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद से परामर्श करने के बाद, एतद्द्वारा अर्हता की नामावली के बदलाव के कारण उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है , अर्थात्:—

प्रथम अनुसूची में ''बाबा फरीद स्वास्थ्य विज्ञान विश्वविद्यालय, फरीदकोट, पंजाब'' के समक्ष शीर्षक 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके आगे कालम (2) के रूप में संदर्भित] के अन्तर्गत, शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके आगे कालम (3) के रूप में संदर्भित] के अन्तर्गत निम्नलिखित को अंत:स्थापित किया जाएगा, अर्थात्:—

(2)	(3)
''बैचलर आफ मेडिसिन एवं बैचलर आफ सर्जरी''	एमबीबीएस (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह ज्ञान सागर मेडिकल कालेज एवं अस्पताल, पटियाला, पंजाब में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में बाबा फरीद स्वास्थ्य विज्ञान विश्वविद्यालय, फरीदकोट, पंजाब द्वारा प्रति वर्ष 100 विद्यार्थियों के वार्षिक दाखिले के साथ दिसम्बर, 2011 में अथवा उसके बाद प्रदान की गई हो)

[सं. यू. 12012/327/2006-एमई (पी-II)]

अनिता त्रिपाठी, अवर सचिव

(Department of Health and Family Welfare)

New Delhi, the 27th July, 2012

S.O. 3341.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule against "Baba Farid University of Health Sciences, Faridkot, Punjab" under the heading 'Recognized Medical Qualification' [in column (2)] and under the heading "Abbreviation for Registration" [in column (3)], the following shall be inserted, namely :—

(2)	(3)
Bachelor of Medicine and Bachelor of Surgery	M.B.B.S. (This shall be a recognized medical qualification when granted by Baba Farid University of Health Sciences, Faridkot, Punjab in respect of students being trained at Gian Sagar Medical College & Hospital, Patiala, Punjab on or after December, 2011 with annual intake of 100 students per year.

[No. U. 12012/327/2006-ME (P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 31 जुलाई, 2012

का.आ. 3342.—केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद से परामर्श करने के बाद, एतद्द्वारा अर्हता की नामावली के बदलाव के कारण उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है , अर्थात्:—

उक्त अनुसूची में—

(क) ''बोम्बे/मुम्बई विश्वविद्यालय, महाराष्ट्र'' के समक्ष शीर्षक 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके आगे कालम (2) के रूप में संदर्भित] के अन्तर्गत, शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके आगे कालम (3) के रूप में संदर्भित] के अन्तर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंत:स्थापित किया जाएगा, अर्थात्:—

(2)	(3)
''डिप्लोमा इन चाइल्ड हैल्थ''	डीसीएच (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह सेठ जी.एस. मेडिकल कालेज, मुम्बई, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में बोम्बे/मुम्बई विश्वविद्यालय, महाराष्ट्र द्वारा वर्ष 1995 से अप्रैल, 2006 के बीच प्रदान की गई हो)

(ख) ''महाराष्ट्र स्वास्थ्य विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र'' के समक्ष शीर्षक 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके आगे कालम (2) के रूप में संदर्भित] के अन्तर्गत, शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके आगे कालम (3) के रूप में संदर्भित] के अन्तर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंत:स्थापित किया जाएगा, अर्थात्:—

(2)	(3)
''डिप्लोमा इन चाइल्ड हैल्थ''	डीसीएच (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह सेठ जी. एस. मेडिकल कालेज, मुम्बई, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में महाराष्ट्र स्वास्थ्य विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा मई, 2006 के बीच प्रदान की गई हो)

सभी नोट करें कि: 1. स्नातकोत्तर पाठ्यक्रम को प्रदान की गई मान्यता अधिकतम 5 वर्ष तक की अवधि के लिए होगी जिसके पश्चात् इसे नवीकृत करवाना होगा।

2. उप-खण्ड 4 में यथापेक्षित मान्यता को समय से

नवीकृत न करवाने के परिणामस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रम में दाखिले निरपवाद रूप से बंद हो जाएंगे।

[सं. यू. 12012/78/2011-एमई (पी. II)]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 31st July, 2012

S.O. 3342.— In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change in name of affiliating University namely:—

(a) against "Bombay/Mumbai University, Maharashtra" under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Diploma in Child Health"	DCH This shall be a recognised medical qualification when granted by Bomaby/ Mumbai University, Maharashtra in respect of students being trained at Seth G.S. Medical College, Mumbai, Maharashtra from 1995 to April, 2006.

(b) against "Maharashtra University of Health Sciences, Nashik, Maharashtra" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Diploma in Child Health"	DCH This shall be a recognised medical qualification when granted by Maharashtra University, of Health Sciences, Nashik, Maharashtra in respect of students being trained at Seth G.S. Medical College, Mumbai, Maharashtra from May, 2006 onwards.

Note: 1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. Failure to seek timely renewal of recognition as required in sub-clause-4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U. 12012/78/2011-ME(P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 9 अगस्त, 2012

का.आ.3343.—केन्द्र सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् से परामर्श करने के बाद उक्त अधिनियम की प्रथम अनुसूची में अर्हता की नामावली में परिवर्तन के कारण निम्नलिखित और संशोधन करती है, अर्थात्:—

उक्त अनुसूची में:—

(क) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "पं. बी.डी. शर्मा स्वास्थ्य विज्ञान विश्वविद्यालय, रोहतक, हरियाणा" के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त: स्थापित किया जाएगा, नामत:—

(2)	(3)
"मजिस्ट्रार ऑफ चिरूरगई (बाल शल्य चिकित्सा)"	एमसीएच (बाल शल्य चिकित्सा) (यह जून, 2012 अथवा उसके बाद पं. बी.डी. शर्मा स्वास्थ्य विज्ञान विश्वविद्यालय, रोहतक, हरियाणा" में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में पं. बी.डी. शर्मा पोस्टग्रेजवेट इंस्टीट्यूट ऑफ मेडिकल साइंसेज, रोहतक, हरियाणा द्वारा स्वीकृत किए जाने पर मान्यताप्राप्त चिकित्हसा अर्हता होगी)।
"मजिस्ट्रार ऑफ चिरूरगई (प्लास्टिक एण्ड रीकंसट्रेकिटव शल्य चिकित्सा)"	एमसीएच (प्लास्टिक एण्ड रीकंसट्रेकिटव शल्य चिकित्सा) (यह जून, 2012 अथवा उसके बाद पं. बी.डी. शर्मा स्वास्थ्य विज्ञान विश्वविद्यालय, रोहतक, हरियाणा" में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में पं. बी.डी. शर्मा पोस्टग्रेजवेट इंस्टीट्यूट ऑफ मेडिकल साइंसेज, रोहतक, हरियाणा द्वारा स्वीकृत किए जाने पर मान्यताप्राप्त चिकित्सा अर्हता होगी)।

(ख) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर" के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त: स्थापित किया जाएगा, नामत:

"डॉक्टर ऑफ मेडिसिन (कम्यूनिटी मेडिसिन)"	एम.डी. (कम्यूनिटी मेडिसिन) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह वैदही इंस्टीट्यूट ऑफ मेडिकल साईसेज एंड रिसर्च सेंटर, बंगलौर, में प्रशिक्षित विद्यार्थियों के बारे में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर द्वारा जून, 2011 में अथवा उसके बाद प्रदान की गई हो)।

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"मजिस्ट्रार ऑफ चिरूरगई (प्लास्टिक सर्जरी)"	एम सी एच (प्लास्टिक सर्जरी) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह एम.एस. रमैया मेडिकल कालेज, बंगलौर में प्रशिक्षित विद्यार्थियों के बारे में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर द्वारा जुलाई, 2011 में अथवा उसके बाद प्रदान की गई हो)।

(ग) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "उत्कल विश्वविद्यालय, उड़ीसा" के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक कं अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त: स्थापित किया जाएगा, नामत:—

"मजिस्ट्रार ऑफ चिरूरगई (यूरोलोजी)"	एम.सी.एच. (यूरोलोजी) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह एस.सी.बी. मेडिकल कालेज, कटक, उड़ीसा में प्रशिक्षित विद्यार्थियों के बारे में उत्कल विश्वविद्यालय, उड़ीसा द्वारा जून, 2012 में अथवा उसके बाद प्रदान की गई हो)।

(घ) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "गुवाहाटी विश्वविद्यालय, गुवाहाटी" के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक कें अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त: स्थापित किया जाएगा, नामत:—

"मजिस्ट्रार ऑफ चिरूरगई (न्यूरो सर्जरी)"	एम.सी.एच. (न्यूरो सर्जरी) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह गुवाहाटी मेडिकल कालेज, गुवाहाटी, असम में प्रशिक्षित विद्यार्थियों के बारे में गुवाहाटी विश्वविद्यालय, गुवाहाटी द्वारा जुलाई, 2011 में अथवा उसके बाद प्रदान की गई हो)।

(ङ) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "मुम्बई विश्वविद्यालय, महाराष्ट्र" के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त: स्थापित किया जाएगा, नामत:—

"डॉक्टर ऑफ मेडिसिन (क्लीनिकल हेमेटोलोजी)"	एम.डी. (क्लीनिकल हेमेटोलोजी) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह सेठ जी.एस. मेडिकल कालेज, मुम्बई, महाराष्ट्र में प्रशिक्षित विद्यार्थियों के बारे में मुम्बई विश्वविद्यालय, महाराष्ट्र द्वारा जून, 2003 में अथवा उसके बाद प्रदान की गई हो)।

(च) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "महाराष्ट्र स्वास्थ्य विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र" के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त: स्थापित किया जाएगा, नामत:—

"डॉक्टर ऑफ मेडिसिन (क्लीनिकल हेमेटोलोजी)"	एम.डी. (क्लीनिकल हेमेटोलोजी) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह सेठ जी.एस. मेडिकल कालेज, मुम्बई, महाराष्ट्र में प्रशिक्षित विद्यार्थियों के बारे में महाराष्ट्र स्वास्थ्य विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा जून, 2003 में अथवा उसके बाद प्रदान की गई हो)।

(छ) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "बाबा फरीद स्वास्थ्य विज्ञान विश्वविद्यालय, फरीदकोट" के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त: स्थापित किया जाएगा, नामत:-

"डॉक्टर ऑफ मेडिसिन (न्यूरोलोजी)"	एम.डी. (न्यूरोलोजी) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह दयानन्द मेडिकल कालेज, लुधियाना में प्रशिक्षित विद्यार्थियों के बारे में बाबा फरीद स्वास्थ्य विज्ञान विश्वविद्यालय, फरीदकोट द्वारा मई, 2012 में अथवा उसके बाद प्रदान की गई हो)।

सभी के टिप्पणी: 1. स्नातकोत्तर पाठ्यक्रम को प्रदान की गई ऐसी मान्यता की अधिकतम अवधि 5 वर्षों के लिए होगी जिसके उपरान्त इसका नवीकरण कराना होगा।

2. मान्यता को उप-खंड 4 की आवश्यकता के अनुसार समय पर नवीकरण में विफल होने के परिणामस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रम में प्रवेश अनिवार्य रूप से बंद हो जाएंगे।

[सं.यू.-12012/41/2012-एमई (पी-II)]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 9th August, 2012

S.O. 3343.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change of nomenclature of the qualifiaction namely:—

In the said Schedule—

(a) against "Pt. B.D. Sharma University of Health Sciences, Rohtak, Haryana" under the heading 'recognised

Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Magistrar of Chirurgiae (Paedicatric Surgery)"	M. Ch (Paediatric Surgery) (This shall be a recgonised medical qualification when granted by Pt. B.D. Sharma University of Health Sciences, Rohtak, Haryana in respect of the students being trained at Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak, Haryana on or after June, 2012.)
"Magistrar of Chirurgiae (Plastic & Reconstructive Surgery)"	M. Ch (Plastic & Reconstructive Surgery) (This shall be a recognised medical qualification when granted by Pt. B.D. Sharma University of Health Sciences, Rohtak, Haryana in respect of the students being trained at Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak, Haryana on or after June, 20120).

(b) against "Rajiv Gandhi University of Health Sciences, Bangalore" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

"Doctor of Medicine (Community Medicine)"	MD (Community Medicine) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after June, 2011).
"Magistrar of Chirurgiae (Plastic Surgery)"	M. Ch (Plastic Surgery) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at M.S. Ramaiah Medical College, Bangalore on or after July, 2011).

(c) against "Utkal University, Orissa" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

"Magistrar of Chirurgiae (Urology)"	M. Ch (Urology) (This shall be a recognised medical qualification when granted by Utkal University, Orissa in respect of the students being trained at S.C.B. Medical College, Cuttack, Orissa on or after June, 2012).

(d) against "Gauhati University, Guwahati" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

"Magistrar of Chirurgiae (Neuro Surgery)"]	M. Ch (Neuro Surgery) (This shall be a recognised medical qualification when granted by Gauhati University, Guwahati in respect of the students being trained at Gauhati Medical College, Guwahati, Assam on or after June, 2011).

(e) against "Mumbai University, Maharashtra" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

"Doctor of Medicine (Clinical Haematology)"	DM (Clinical Haematology) (This shall be a recgonised medical qualification when granted by Mumbai University, Maharashtra in respect of the students being trained at Seth G.S. Medical College, Mumbai, Maharashtra on or after June, 2003).

(f) against "Maharashtra University of Health Sciences, Nashik, Maharahstra" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

"Doctor of Medicine (Clinical Haematology)"	DM (Clinical Haematology) (This shall be a recognised medical qualification when granted by Maharashtra University of Health Sciences, Nashik, Maharashtra in respect of the students being trained at Seth G.S. Medical College, Mumbai, Maharashtra on or after June, 2003).

(g) against "Baba Farid University of Health Sciences, Faridkot" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

"Doctor of Medicine (Neurology)"	DM (Neurology) (This shall be a recognised medical qualification when granted by Baba Farid University of Health Sciences, Faridkot in respect of the students being trained at Dayanand Medical College, Ludhiana on or after May, 2012).

Note to all:
1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.
2. Failure to seek timely renewal of recognition as required in sub-clause-4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U. 12012/41/2012-ME(P-II)]

ANITA TRIPATHI, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 22 अक्तूबर, 2012

का.आ. 3344.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:-

अनुसूची

क्रम सं॰	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1.	आई एस 15928: 2012-सोडियम हाईड्रौक्साईड, खाघ ग्रेड, विशिष्टि	-	30 सितंबर 2012
2.	आई एस 15929: 2012-पैक्टीन, खाद्य ग्रेड - विशिष्टि	-	30 सितंबर 2012
3.	आई एस 12760: 2012/आईएसओ 8070: 2007 - दुग्ध एवं दुग्ध उत्पाद कैल्शियम, सोडियम, पोटाशियम और मैग्नीशियम का अंश ज्ञात करना - परमाण्विक अवशोषण स्पेक्ट्रोमैट्रिक पद्धति (पहला पुनरीक्षण)	आईएस12760:1989/ आई एस ओ 8070: 1987	30 सितंबर 2012

इन भारतीय मानक (कों) की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली - 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चैन्नई, मुम्बई चण्डीगढ़ तथा शाखा कार्यालयों, अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवतन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एफएडी/जी-128]

डॉ. आर. के. बजाज, वैज्ञानिक 'एफ' एवं प्रमुख (खाद्य एवं कृषि)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 22nd October, 2012

S.O. 3344.—In pursuance of Clause (b) of sub-rule (1) of rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. and Year of Indian Standards' if any, superseded by the New Indian Standard	Date of Established
1	IS 15928 : 2012 Sodium hydroxide, food grade-Specification	– –	30 September 2012
2	IS 15929:2012 Pectin, food grade - Specification	–	30 September 2012
3	IS 12760 : 2012/ISO 8070: 2007 Milk and Milk Products—Determination of Calcium, Sodium, Potassium And Magnesium Contents—Atomic Absorption Spectrometric Method (First revision)	IS 12760 : 2012/ ISO 8070 : 2007	30 September 2012

Copy of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna,Pune Thiruvananthapuram.

[Ref. FAD/G-128]

Dr. R. K. BAJAJ, Scientist 'F' and Head (Food & Agri.)

नई दिल्ली, 29 अक्तूबर, 2012

का.आ. 3345.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:—

अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा	भाग	अनु	वर्ष
01.	एल-9952508	05.09.2012	मै. मुस्कान इण्टरप्राइसिस, डी-3/36, शिव दुर्गा विहार, लकड़पुर, जिला फरीदाबाद-121009 (हरियाणा)	मोटरसाईकिल चालकों के लिए संरक्षी हैल्मेट	4151	-	-	1993
02.	एल-9952710	10.09.2012	मै. श्री गिरिराज सारीज एंड ज्वैलर्स, मेन सदर बाजार, जिला गुड़गांव, (हरियाणा)	स्वर्ण एवं स्वर्ण मिश्र धातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
03.	एल-9954209	10.09.2012	मै. हिलसन फुटवीयर प्रा. लि., प्लॉट नं. 420-421, एम आई ई, भाग-1, बहादुरगढ़, जिला झज्जर-124507 (हरियाणा)	निजी सुरक्षा उपस्कर भाग 2 सुरक्षा फुटवीयर	15298	02	-	2002
04.	एल-9954714	12.09.2012	श्री इंडियन ह्यूम पाइप्स, 100 केएम स्टोन दिल्ली, गांव सांझारपुर, एचएसआईआईडीसी, बावल, जिला रेवाड़ी-123401 (हरियाणा)	पूर्वढलित कंक्रीट पाइप (प्रबलन सहित और रहित)	458	-	-	2003
05.	एल-9956112	13.09.2012	मै. श्री श्याम स्पन पाइप उद्योग, गांव अहमदपुर परताल, तहसील कोसली, जिला रेवाड़ी-123401 (हरियाणा)	पूर्वढलित कंक्रीट पाइप (प्रबलन सहित और रहित)	458	-	-	2003
06.	एल-9953813	17.09.2012	मै. परफैक्ट इंजीनियरिंग सर्विसिज, 95, प्राथमिक सरकारी स्कूल के सामने, मिर्जापुर, बल्लभगढ़, जिला फरीदाबाद-121004 (हरियाणा)	एसी स्टेटीक वाटअवर मीटर, श्रेणी 1 और 2	13779	-	-	1999

[सं. सीएमडी/13:11]

एम. के. जैन, वैज्ञानिक 'एफ' एवं प्रमुख

4073 GI/12-3

New Delhi, the 29th October, 2012

S.O. 3345 .—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licences No. CM/L-	Grant Date	Name & Address of the Licensee	Title of the Standards	S.No.	Part.	Sec	Year
01	L-9952508	05.09.2012	M/s. Muskan Enterprises, D-3/36, Shiv Durga Vihar Lakarpur, Distt. Faridabad-121009 Haryana.	Protective Helmets for Motercycles Riders	4151	—	—	1993
02	L-9952710	10.09.2012	M/s. Shree Giriraj Sarees and Jewellers, Main Sadar Bazar, Distt. Gurgaon Haryana.	Gold & Gold Alloys, Jewellery/Artefacts-Fineness and Marking	1417	—	—	1999
03	L-9954209	10.09.2012	M/s. Hillson Footwear Pvt. Ltd., Plot No. 420-421, M.I.E. Part-I, Bahadurgarh, Distt. Jhajjar-124507 Haryana.	Personal Protective Equipment Part 2 Safety Footwear	15298	02		2002
04	L-9954714	12.09.2012	M/s. Indian Hume Pipes, 100 Km Stone Delhi, Village Sanjharpur, HSIIDC Bawal, Distt. Rewari-123401 Haryana.	Precast Concrete Pipes (with and without Reinforcement)	458	—	—	2003
05	L-9956112	13.09.2012	M/s. Shri Shyam Spun Pipe Udyod, Village-Ahmedpur Partal, Tehsil Kosli, Distt. Rewari-123401 Haryana.	Precast Concrete Pipes (with and without Reinforcement)	458	—	—	2003
06	L-9953813	17.09.2012	M/s. Perfect Engineering Services, 95, Opp. Primary Govt. School, Mirzapur, Bllabgarh, Distt. Faridabad-121004 Haryana.	ac Static-Watthour Meters Class 1 and 2	13779	—	—	1999

[No. CMD/13:11]

M.K. JAIN, Scientist 'F' & Head

नई दिल्ली, 30 अक्तूबर, 2012

का.आ. 3046.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आई एस 15722 : 2006 सड़क वाहन-संपीड़ित प्राकृतिक गैस (सीएनजी) ईंधन प्रणाली के घटक-सिरे कनेक्शन सहित सीएनजी निम्न-दाब नम्य ईंधन लाईन [2.15 मैगापास्कल (21.5 बार] से कम दाब की सीएनजी ईंधन लाईन)	संशोधन संख्या 1, सितंबर 2012	तत्काल प्रभाव से
2	आई एस 15715:2008 सड़क वाहन-संपीड़ित प्राकृतिक गैस (सीएनजी)/ द्रवित पेट्रोलियम गैस (एलपीजी) ईंधन प्रणाली के घटक-कंडयुट (संवातन होज)	संशोधन संख्या 1 सितम्बर, 2012	तत्काल प्रभाव से

इस संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग , नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे, परवाणु, देहरादून तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ टी ई डी/जी-16]

पी. सी. जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 30th October, 2012

S.O. 3346.—In pursuance of clause (b) of sub-Rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No.	No. year & title of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 15722 : 2006 Road vehicles-Compressed Natural Gas (CNG)-Fuel system components-CNG Low-pressure flexible fuel line with end connection [CNG fuel line having pressure not exceeding 2.15 MPa (21.5 BAR)]	Amendment No. 1, September 2012	With immediate effect
2	IS 15715 : 2008 Road vehicles-Compressed Natural Gas (CNG)-Fuel system components-Conduit (Ventilation Hose)	Amendment No. 1, September 2012	With immediate effect

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkatta Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Parwanoo, Dehradun, Thiruvananthapuram.

[Ref. TED/G-16]

P.C. JOSHI, Scientist 'F' & Head (Transport Engg.)

नई दिल्ली, 30 अक्तूबर, 2012

का.आ.3347.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल-	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम संबद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	4003026	हैगर इलैक्ट्रो एस.ए.एस. वौलेवार्ड डी-यूरोप बीपी-3 एफ-67215 ओबेर्नाय, सिडेक्स	आईएस 8828:1996-विद्युत सहायक अंग - घरेलू और ऐसे ही संस्थापनों के लिए अतिधारा संरक्षण हेतु परिपथ वियोजक	11-08-2010
2.	4003329	पशुपति ट्यूब्स मिल्स प्रा.लि., पी.ओ. बॉक्स सं. 116, भृकुटी चौक, बिराट नगर, नेपाल	आई एस 3601:2006-यांत्रिक और सामान्य इंजीनियरिंग प्रयोजनों के लिए इस्पात के पाइप	26-07-2010
3.	4005737	केलानी केबल्स लिमिटेड, पी.ओ. बॉक्स 14, वेवेल्दुवा, केलानिया, श्रीलंका	आई एस 694:1990-1100 वोल्ट तक की कार्यकारी वोल्टता के लिए पीवीसी रोधित केबल	02-03-2010
4.	4008541	पाओनियर सीमेंट लिमिटेड, चेन्की, जौहराबाद, जिला खुशाब, पाकिस्तान जौहराबाद	आईएस 8112:1989-43 ग्रेड साधारण पोर्टलैंड सीमेंट	19-07-2011
5.	4010831	मिशलीन सायम कम्पनी लि॰, सायम सीमेंट इंडस्ट्रियल एस्टेट, 57 मू., 6 नोन्गप्लाक्राडी रोड, नान-प्लामोर, नॉन्खई साराबुरी 18140 थाईलैंड	आईएस 15636:2005-स्वचालित वाहन-व्यावसायिक वाहनों के लिए हवा भरे टायर्स-डायगोनल और रेडियल प्लाई	17-01-2012
6.	4011530	मिशलीन शेनयांग टायर कं. लि., नं. 15 शेनजिंग रोड, शेनयांग यु-हॉग, चीन 110141	आईएस 15636:2005-स्वचालित वाहन-व्यावसायिक वाहनों के लिए हवा भरे टायर्स-डायगोनल और रेडियल प्लाई	16-01-2012
7.	4012229	बेस्टवे सीमेंट लिमिटेड, कालार कहार-चोआ, सैदान शाह रोड, जिला- चकवाल, पंजाब पाकिस्तान	आईएस 12269:1987-53 ग्रेड साधारण पोर्टलैंड सीमेंट	19-01-2012
8.	4014031	शिन्कवांग लंका (प्रा.) लि., पटटीविला रोड, सपुगस्कांडा, माकोला, कोलम्बो, श्रीलंका	आईएस 15111:2002-सामान्य प्रकाश व्यवस्थाओं के लिए स्वत: बालास्टकृत लैम्प	10-05-2010
9.	4015033	लफार्ज सीमेंट यू के, लफार्ज स्पेशल सीमेंट वर्क्स लेन, बार्नस्टोन, नॉटिंघम, यू के-एनजी 139 जेटी नॉटिंघम	आईएस 12330:1099 - सल्फेट प्रतिरोधी पोर्टलैंड सीमेंट	12-01-2012
10.	4020531	पीटी, मल्टीस्ट्रेडा अराह सराना टीबीके, जे 1 राया लेमहाबंग किमी 58, डेसा, करान्गसारी, सिकारन्ग तिमूर बेकासी 17550, जावा भारत	आईएस 15633:2005-स्वचालित वाहन यात्री कार वाहनों के लिए हवा भरे टायर्स - डायगोनल और रेडियल प्लाई	01-08-2012
11.	4026745	आईट्रॉन मिटरिंग सॉल्यूशन्स यू के लि., लेन्जर रोड, फेलीक्सटोवे सफोक आईपी 11 2ईआर यूनाईटेड किंगडम	आईएस 13779:1999-एसी स्थेतिक घन्ट्य मीटर, वर्ग 1 और 2	02-08-2012

[संदर्भ सीएमडी-1/13:13]

पी.के. गम्भीर, वैज्ञानिक 'जी' एवं प्रधान (प्रमाणन)

New Delhi, the 30th October, 2012

S.O. 3347.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each :

SCHEDULE

Sl. No.	Licence No. CM/L	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
1.	4003026	Hager Electro S.A.S., Boulevard D-Europe BP-3, F-67215 Obernai Cedex	IS 8828:1996-Electrical accessories-circuit breakers for over current protection for household and similar installations	11/08/2010
2.	4003329	Pashupati Tubes Mills Pvt. Ltd., P.O. Box No. 116, Bhrikuti Chowk Birat Nagar Nepal	IS 3601:2006-Steel tubes for mechanical and general engineering purposes	26/07/2010
3.	4005737	Kelani cables Limited, P.O. Box 14, Wewelduwa, Kelaniya, Sri Lanka	694:1990-PVC insulated cables for working voltages upto and including 1100 V	02/03/2010
4.	4008541	Pioneer Cement Limited, Chenki, Jauharabad Distt. Khushab, Pakistan Joharabad	8112:1989-43 grade ordinary Portland cement	19/07/2011
5.	4010831	Michelin Siam Company Ltd., Siam Cement Industrial Estate, 57 Moo 6, Nong-Plakradee Road, Non-Plamor, Nongkhae, Saraburi 18140 Thailand	15636:2005—Automotive vehicles-pneumatic tyres for commercial vehicles-diagonal and radial ply	17/01/2012
6.	4011530	Michelin Shenyang Tyre Co. Ltd., No. 15 Shenxin Road, Shenyang, Yu Hong China - 110141	15636:2005—Automotive vehicles-pneumatic tyres for commercial vehicles-diagonal and radial ply	16/01/2012
7.	4012229	Bestway Cement Limited Kallar Kahar-Choa Saidan Shah Road, District-Chakwal, Punjab	12269:1987—53 grade ordinary Portland cement	19/01/2012
8.	4014031	Shinkwang Lanka (Pvt.) Ltd., Pattiwila Road, Sapugaskanda Makola, Colombo, Sri Lanka	15111:2002—Self ballasted lamps of general lighting services (Part 1 and 2)	10/05/2010
9.	4015033	Lafarge Cement UK Lafarge Special Cement Works lane, Barnstone, Nottingham, UK-NG139JT Nottingham	12330:1099—Sulphate resisting Portland cement	12/01/2012
10.	4020531	Pt. Multistrada Arah Sarana, Tbk, J1. Raya Lemahabang Km. 58, 3 Desa, Karangsari, Kec. Cikarang Timur Bekasi 17550, Jawa Barat	15633:2005—Automotive vehicles-pneumatic tyres for passenger car vehicles-diagonal and radial ply	01/08/2012
11.	4026745	Itron Metering Solutions UK Ltd., Langer Road, Felixstowe Suffolk IP 11 2ER UK	13779:1999—ac static watthour meter, class 1 and 2	02/08/2012

[No. CMD-1/13:13]

P.K. GAMBHIR, Scientist 'G' & Chief (Certification)

4073 GI/12-4

नई दिल्ली, 30 अक्तूबर, 2012

का.आ. 3348.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में एतद्द्वारा अधिसूचित किया जाता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं और वापस ले लिये गये हैं:—

अनुसूची

क्रम सं॰	रद्द किये गये मानक की संख्या और वर्ष	भारत के राजपत्र भाग II, खंड 3, उपखंड (ii) में का.आ. संख्या और तिथि प्रकाशित	टिप्पणी
(1)	(2)	(3)	(4)
1	आई एस 13494:1992 स्वचल वाहन — एयर ब्रेक प्रणाली unloader वाल्व के लिए प्रदर्शन आवश्यकताओं	—	—

[संदर्भ टी ई डी/जी-16]

पी.सी. जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 30th October, 2012

S.O. 3348.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, it is hereby notified that the Indian Standards, Particulars of which are mentioned in the Schedule give hereafter, have been cancelled and stand withdrawn.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Cancelled	S.O. No. & Date published in the Gazette of India, Part-II, Section-3 Sub-section (ii)	Remarks
(1)	(2)	(3)	(4)
1	IS 13494 : 1992 Automotive vehicles—Air brake systems—Performance requirements for unloader valves	—	—

[Ref. TED/G-16]

P.C. JOSHI, Scientist 'F' & Head (Transport Engg.)

नई दिल्ली, 31 अक्तूबर, 2012

का.आ. 3349.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या और वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आई.एस. 7349:2012 बैरज और वियर-प्रचालन और रख-रखाव - मार्गदर्शी (दूसरा पुनरीक्षण)	आई.एस. 7349:1989	30.09.2012

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानक कों http://www.standardarsbis.in पर ऑनलाइन द्वारा खरीदा जा सकता है।

[संदर्भ डब्लू आर डी 22/टी-2]

जे.सी. अरोड़ा, वैज्ञानिक 'एंफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 31st October, 2012

S.O. 3349.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each :

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Establishment	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS 7349 : 2012 Barrages and weirs—Operation and maintenance—Guidelines (second revision)	IS 7349 : 1989	30.09.2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar March, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On-line

purchase of Indian Standard can be made at: http://www.standardsbis.in

[Ref. WRD 22/T-2]

J.C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

नई दिल्ली, 31 अक्तूबर, 2012

का.आ. 3350.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण भारतीय मानक ब्यूरो में एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं ।

अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या और वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई.एस. 10386:2012 नदी घाटी परियोजनाओं के निर्माण, प्रचालन और रखरखाव की सुरक्षा संहिता भाग 11 भूमिगत उत्खनन	—	30-09-2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानक को http://www.standardarsbis.in पर ऑनलाइन द्वारा खरीदा जा सकता है।

[संदर्भ डब्ल्यू आर डी 21/टी-11]

जे.सी. अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 31st October, 2012

S.O. 3350.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which is/are given in the Schedule hereto annexed has been established on the date indicated against each :

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 10386 (Pt. 11) : 2012 Safety code for construction, operation and maintenance of river valley projects Part 11 Underground excavation	—	30-09-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On-line purchase of Indian Standard can be made at : http://www.standardsbis.in

[Ref. WRD 22/T-11]

J.C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

कोयला मंत्रालय

आदेश

नई दिल्ली, 8 नवम्बर, 2012

का.आ. 3351.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1565, तारीख 24 अप्रैल, 2012 के भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii) तारीख 29 अप्रैल से 5 मई, 2012 साप्ताहिक, में प्रकाशित होने पर उक्त अधिसूचना से संलग्न अनुसूची 'क' में वर्णित 949.24 हेक्टर या 2345.57 एकड़ भूमि तथा अनुसूची 'ख' में वर्णित 11.88 हेक्टर या 29.35 एकड़ माप वाली उक्त भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई करने और तलाश करने, उन्हें प्राप्त करने, उन पर काम करने और उन्हें ले जाने के अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यांतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, पोस्ट बाक्स संख्या 60, जिला-बिलासपुर-495 006, छत्तीसगढ़ (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है) ऐसे निबंधनों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त अनुसूची 'क' में वर्णित 949.24 हेक्टर या 2345.57 एकड़ भूमि तथा अनुसूची 'ख' में वर्णित 11.88 हेक्टर या 29.35 एकड़ माप वाली उक्त भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई करने और तलाश करने, उन्हें प्राप्त करने, उन पर काम करने और उन्हें ले जाने के अधिकार, तारीख 5 मई, 2012 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त कंपनी में निहित हो जाएंगे, अर्थात्:—

(1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी और वैसी ही मदों की बाबत

किए गए सभी संदायों की केन्द्रीय सरकार की प्रतिपूर्ति करेगी;

(2) उक्त अधिनियम की धारा 14 के अधीन, केन्द्रीय सरकार, शर्त (1) के अधीन, सरकारी कंपनी द्वारा को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त कंपनी द्वारा वहन किये जायेंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकार के लिए या उसके संबंध में जैसे अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, इसी प्रकार सरकारी कंपनी द्वारा वहन किये जायेंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और भूमि में या उसके ऊपर इस प्रकार निहित अधिकार को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों को, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किये जाएं, पालन करेगी।

[फा.सं. 43015/9/2010-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 8th November, 2012

S.O. 3351.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 1565, dated the 24th April, 2012, published in the Gazette of India, Part-II, Section 3, Sub-section (ii), dated the 29th April to 5th May, 2012 weekly, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the rights of mine, quarry, bore, dig and search for mine, work and carry away minerals in the lands measuring 949.24 hectares or 2345.57 acres described in Scheduled 'A'; and all rights in or over the land measuring 11.88 hectares or 29.35 acres described in Scheduled "B" appended to the said notification (hereinafter referred to as the Schedule land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And, whereas, the Central Government is satisfied that the South Eastern Coalifields Limited, Seepat Road, Post Box number 60, District-Bilaspur-495006, Chhattisgarh (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the power conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the rights of mine, quarry, bore, dig and search for mine, work and carry away minerals in the lands measuring 949.24 hectares or 2345.57 acres described in Schedule 'A'; and all rights in or over the land measuring 11.88 hectares or 29.35 acres described in Scheduled "B", so vested in it shall, with effect from the 5th May, 2012, instead of continuing to so vest Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely :—

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like as determined under the provisions of the said Act;

2. A tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under conditions (1) and all expenditure incurred in connection with constitution of such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals etc. for or in connection with the rights in or over the said lands so vested, shall also be borne by the Government Company;

3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vested;

4. The Government Company shall have no power to transfer the said lands and rights to any other persons without the prior approval of the Central Government; and

5. The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[F. No. 43015/9/2010-PRIW-I]

A.K. DAS, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 20/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.09.2012 को प्राप्त हुआ था।

[सं. एल-12011/123/2006-आईआर (बी-II)]
शीश राम, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th September, 2012

S.O. 3352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 20/2007) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 04.09.2012.

[No. L-12011/123/2006-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

Shri Kishori Ram,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 20 of 2007

PARTIES: Employer in relation to the management of Central Bank of India, Patna and their workman/ workwoman.

APPEARANCES:

On behalf of the workwoman:	None
On behalf of the management:	None
State: Bihar/Jharkhand	Industry: Banking

Dated, Dhanbad 24th May, 2012. 27th August, 2012

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal *vide* their order No. L-12011/123/2006-IR (B-II) Dtd. 28.05.2007.

SCHEDULE

(i) Is the management of Central Bank of India justified in emplementing the punishment on its charge sheeted employee without obtaining permission from the Conciliation Officer when the conciliation proceeding was pending? If not what remedy the employee is entitled to? (ii) Is the management of Central Bank of India justified in imposing punishment on Smt. P. Sunita Kullu is legal and justified? If not, what relief the employee is entitled to?

2. Neither Union Representative for the workwoman concerned nor the workwoman produced for her evidence nor any representative for the management appeared nor any rejoinder filed on behalf of the Union concerned despite seven registered notices.

Perused the case record; it stands clear that the case has been pending all along for filing rejoinder for workwoman Smt. P. Sunita Kullu since 13.01.2011, for which Regd. notices dt. 14.12.2010, 05.01.2011, 28.02.2011, 17.03.2011, 17.11.2011 and lastly, dt. 10.04.2012 issued to both the parties on their addresses noted specifically in the reference. The conduct of the Union Representative as well as the workwoman shows that they have lost their interest or got disinterestedness in pursuing the case for finality of the Industrial Dispute as raised in the Reference related to implementation of the punishment on the chargesheeted workwoman P. Sunita Kullu without permission from the Conciliation Officer and impositation of punishment on her.

Proceeding with the case in such uncertain situation is absolutely unwarranted for infinity. Under these circumstances, the case is closed; and accordingly an order of no industrial dispute existent is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या सीजीआईटीए/17/2006,

आईटीसी-34/97 (पुराना)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.09.2012 को प्राप्त हुआ था।

[सं. एल-12012/48/1993-आईआर(बी-II)]

शीश राम, अनुभाग अधिकारी)

New Delhi, the 14th September, 2012

S.O. 3353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. CGITA/17/2006 (ITC-34/97 old)] of the Central Govt. Industrial Tribunal/Labour Court, Ahmedabad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of LIC OF INDIA and their workman, which was received by the Central Government on 10.9.2012.

[No. L-12012/48/1993-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT :
Binay Kumar Sinha,
Presiding Officer,
CGIT cum Labour Court,
Ahmedabad, Dated 14th August-2012

Reference: CGITA of 17/2006

Reference: ITC. 34/1997 (old)

The Senior Divisional Manager,
LIC of India, LIC office,
Tagore Marg, Mahila College Chowk,
Rajkot. .....First Party

And their workman
Shri Vinod M. Solanki,
C/o Chandan Embroidery,
S.T. Road, Dhorji,
Dist.-Rajkot. .....Second Party

For the first party: Shri K.V. Gadhia, Advocate
Shri M.K. Patel, Advocate

For the second party: Shri P.C. Chaudhary, Advocate

AWARD

As per order New Delhi dated 28, July-1997 the Appropriate Government, Government of India, Ministry of Labour, New Delhi by its notification No. L-12012/48/93-IR(B-II) in exercise of power under clause (d) of sub-section 1 of Section 10 of the ID Act, 1947 referred the dispute for adjudication to the Industribal Tribunal, Rajkot, formulating the terms of reference as follows:—

SCHEDULE

"Whether the action of the Senior Divisional Manager, LIC of India Ltd, Rajkot Division, and through its Officers in terminating/discontinuance/not engaging Sh. Vinod N. Solanki, Assistant at the Dhoraji Branch w.e.f. 31.03.1990 is valid, legal and justified? If not, to what benefits the said workman is entitled?"

(2) The parties to the reference were noticed and both sides appeared and filed their respective pleadings statement of claim by the second party workman and written statement by the first party management of LIC.

(3) The case of the second party workman as per statement of claim vide Ext. 3 is that he was working as an Assistant on a remuneration of Rs. 1302 per month with the first party Dhorji branch office since 12.09.1988 and during last 12 months he had worked for about 290-300 days. But he was terminated from service by oral order on 01.04.1990 without following process of law. Further case is that at the time of his termination, work which was carried out by him is still available with the first party. Further case is that the juniors were taken by the first party whereas his service illegally terminated and that also new recruitment was made on the same post. On these scores prayer has been made for his reinstatement on the original post with full back wages and consequential benefits.

(4) As against the statement of claim, the first party (LIC of India Ltd.) has filed its written statement at Ext. 14 pleading inter-alia that the second party workman was employed as a temporary Assistant for the period from 12.09.1988 to 29.11.1988. Again the workman was engaged on temporary period from 05.12.1989 to 31.01.1989. The case of the first party is that in all the second party workman had worked for 136 days only. Since the temporary appointment was only for a specified period on both the occasions, it comes to an end automatically on the expiry of the period for which he was appointed on a temporary basis. On these scores prayer has been made to dismiss the reference since the same is without merit and the second party workman is not entitled to get any relief.

(5) It may be mentioned that earlier by the award dated 31, May-2004 passed by Shri N.K. Jiyani member Industrial Court No.2 (Central) Rajkot, in the reference ITC No. 34/1997, the reference was allowed in part directing to first party LIC to reinstate the

second party workman on his original post with 75% back wages. That award was challenged by the management of LIC of India in SCA No., 2162 of 2005 and the Hon ble High Court of Gujarat by the order dated 17.01.2006 was pleased to quash and set aside the award dated 31.05.2004 passed in reference ITC No. 34/1997 by the Industrial Court of Rajkot and the Hon'ble Court has been pleased to remand the matter to the tribunal for fresh decision on reconsideration of all the issues including jurisdiction and number of days worked by the respondent. Consequently the case record reference ITC No. 34/1997 (old) was remitted back in this Industrial Tribunal and the case thereafter was registered as reference (CGITA) 17/2006 corresponding to old reference ITC 34/1997.

(6) The parties to the reference did not adduce any fresh evidence then what were adduced by the parties earlier.

(7) In view of the pleadings of the parties the following issues are framed for arriving at decision in this case on reconsideration of the materials on the record.

ISSUES

(I) Whether the reference is maintainable?

(II) Whether the workman (second party) has valid cause of action to raise this dispute?

(III) Whether the provisions of Industrial Dispute Act, 1947 are applicable to the first party LIC of India Ltd. or not? Whether this tribunal has jurisdiction to adjudicate upon the dispute referred by the Appropriate Government?

(IV) Whether the second party workman has worked for more than 240 days in the calendar year preceding his termination?

(V) Whether the first party had violated the provision of Section 25 (F), 25 (G) and 25 (H) of the ID Act, 1947? (VI) Whether the action of the management of LIC of India Ltd., Rajkot Division in terminating/ discontinuance/not engaging the workman Shri Vinod. N. Solanki Assistant at Dhorji Branch w.e.f. 31.03.1990 is justified and valid?

(VII) Whether the second party workman is entitled to the relief of reinstatement with back wages as claimed?

(VIII) What orders are to be passed?

FINDINGS

(8) **ISSUE NO. III**

The first party in its pleading has taken also objection regarding jurisdiction of this Industrial Tribunal to entertain this reference case. This issue of jurisdiction has to be decided along with other issues on reconsideration of the materials as per direction of the Hon 'ble Court contain in the remand order dated 17.01.2006 passed in SCA No. 2162 of 2005. in this connection the contention of the first party is that the LIC is not an industry and so the provision of Industrial Dispute Act, 1947 is not applicable rather the provision of LIC Act 1956 with rules made under Section 48(2) (cc) of the 1956 Act are applicable. On the other hand learned counsel appearing for the second party vehemently opposed such contention raised by the learned counsel of the first party and empathetically argued that the LIC Act of 1956 did not contain any provision ousting the jurisdiction of the Civil Court or Industrial Court. In this connection reliance has been placed upon the case law between LIC of India and R. Suresh reported in 2008 -(II)- LLJ- 708 (SC) wherein their Lordship of the Apex Court have held "Jurisdiction of Industrial Tribunal to decide validity of dismissal of Development Officer in LIC is not ousted, expressly or by implication, under the LIC Act of 1956". It has also been held by their Lordship that Development Officer was a "workman" and that an Industrial Court had discretionary jurisdiction under Section 11- A of the I.D. Act, 1947 which must be exercised judiciously.

(9) After consideration of the submissions made on behalf of the both parties and also considering the case law of the Hon'ble Apex Court, I find and hold that the provision of Industrial Dispute Act, 1947 is applicable to the LIC of India Ltd. wherein a dispute is raised by workman regarding illegal termination. I further find and hold that since the Appropriate Government has referred the dispute for adjudication under the terms of reference so this tribunal has got jurisdiction to adjudicate upon the dispute. This issue is answered accordingly.

(10) **ISSUE NO. IV**

The second party has produced documents at list Ext. 16. Ext. 18 is the appointment order of the workman and 23 other candidates dated 28.09.1988. Through Ext. 18 the workman Vinod N. Solanki as Assistant was appointed for the period from 12.09.1988 to 28.11.1988 at Dhorji branch office of the LIC. Ext. 19 is another appointment order dated 21.12.1988 of 19 candidates including the workman Shri Vinod N. Sonalki. Through this order the workman Vinod N. Solanki was appointed as Assistant from 05.12.1988 to 31.01.1989. Ext. 20 is the copy of the workman addressed to Central Manager for payment of wages for 6 days 29.11.1988 to 04.12.1988. Ext. 21 is the UPC through

which Ext. 20 was sent to the Central Manager LIC. Ext. 22 is another letter of the workman addressed to Central Manager, Bombay LIC dated 01.09.1990 demanding for payment of the wages for the works not paid by the Manager. Ext. 36 is the details and description of salary of the workman in the branch of Dhorji LIC of India. This is self-made statement by the workman having no authentication by any officer of the management. Ext. 24 is the suspense memorandum in the name of M.K. Desai, Surat having policy proposal No. 1431 with the signature of the cashier and fee Assistant/Branch Manager, two other documents of suspense memorandum in the name of Abdulaha Fakar Nadi Bazar, Baherpura Dhorji and Razak Absha of Dhorji has also been filed. These 3 suspense memorandum does not go to connect the date of work of the second party workman. Ext. 25 is the demand notice made to the Manager and Senior Divisional Manager LIC, Dhorji, Rajkot regarding alleged termination of the second party workman and its copy also given to Assistant Commissioner of Labour Central Adipur too. Ext. 28 copy of application for the post of Assistant filled up by the second party workman Vinod N. Solanki with reference to Employment notice No. RJT -1/88/90 at the bottom of this application there is endorsement regarding the work of the workman for 78+58 days as temporary Assistant. Ext. 29 is the copy of offer of Badli appointment to Shri M.H. Hirapara as temporary Assistant, Dhorji branch and mentioning as to offering badly appointment for the post of temporary Assistant at Dhorji branch for period 25.08.1989 to 09.11.1989 and 19.06.1989 to 01.09.1989. Ext. 30 is the application of Mahesh H. Hirapara knowing as to his appointment as temporary Assistant in Dhorji branch office of LIC from 19.06.1989 to 09.11.1989 knowing also that Mr. Vinod N. Solanki was also working as temporary Assistant. This letter does not also go to connect that the second party workman had worked up to 31.03.1990. Ext. 31 is another offer of Badli appointment for the post of temporary assistant given to V.G. Trivedi for the period from 27.06.1989 to 09.09.1989. Ext. 32 is another badly offered of appointment in the name of J.K. Thumar for the period 29.05.1989 to 11.08.1989. Ext. 17 is the oral evidence of the workman Vinod N. Solanki.

(11) On the other hand on behalf of the first party management Shri Nilesh N. Mehta deposed in oral evidence in support of the first party case at Ext. 42.

(12) The workman Vinod N. Solanki in his oral evidence at Ext. 17 tried to support as per his statement of claim that he was all along continuing in the service of the management of LIC at Dhorji branch but he could not substantiate his such claim of continuance of working right from temporary appointment as Assistant in the month of September-1988. Rather only 2 documents Ext. 18 and Ext. 19 go to show that he was appointed purely on temporary basis for a specified period from 12.09.1988 to 29.11.1988 vide Ext. 18 and thereafter again he was appointed for a specified period from 05.12.1988 to 31.01.1989 for a specified period vide Ext. 19. Thereafter no any other appointment order could have been produced. It is also not a case of the workman that subsequently also appointment orders were issue for his continuance of work up to 31.03.1990. During cross-examination by the lawyer of the first party the workman at Ext. 17 has admitted that he has no document to show that he was appointed on the permanent basis he only stated in examination-in-chief that he had been given two orders regarding his appointment vide Ext. 18 and 19. He also admitted in cross-examination that the documents marked 16/8 and 16/9 corresponding to pacca exhibits (36 and 37) do not contain any signature or seal of the officers of the LIC. The workman during cross-examination has also admitted as to his gainful employment after alleged termination/discontinuance of his service he has stated that he is working at Madresa at Dhorji since 12.06.1990 and that initially he was being paid Rs. 550/- per month and on the date of deposition he was getting 950/- per month. As against this, evidence of the first party witness Shri N.N. Mehta Assistant Administration Officer file Ext. 42 is that the second party workman had worked only for 137 days by two orders of temporary appointment. He further deposed that the workman was appointed temporarily when new branch at Dhorji was started that no juniors to the second party were continued when term of second party was completed. This management witness was cross-examined at length, but nothing could have been gained to support the case of the second party.

(13) It has been pointed out during argument on behalf of the first party that the Industrial Tribunal, Rajkot had earlier passed its award on 31.05.2004 directing the first party corporation to reinstate the workman on his original post with 75% back wages and that award was challenged by the first party in SCA No. 2162/2005. It has been further pointed out during argument that the Industrial Tribunal has wrongly computed the number of days of the workman at para 11 of its award dated 31.05.2004 and has wrongly mentioned that the second party workman has worked for 246 days. Whereas such computation of the work of the second party

workman was erroneous and the tribunal had calculated the period from 12.09.1988 to 28.11.1988 twice, thereafter the total come to 246 days. But in fact even if it is presumed that the second party has worked as per details mentioned at page 6 para 11 of the award passed by the tribunal dated 31.05.2004 then also it comes 166 days only if calculated right. It has been further argued that as per the first party case and also as per admission of the second party in his deposition Ext. 17 he was appointed twice for the period from 12.09.1988 to 29.11.1988 i.e. for 78 days and 05.12.1988 to 31.01.1989 i.e. 58 days, in total he had worked for 136 days only. It has been further argued on behalf of the first party that from plain reading it transpired that the date of termination is 31.03.1990 whereas as per statement of claim (Ext. 3) the date of termination is mentioned as 01.04.1990 so as per terms of reference the reference become premature and so the second party is not entitled to get any relief as prayed for. In summing up the argument, the learned counsel for the first party has argued that from Ext. 18 and 19 it is crystal clear that the second party has worked for only 136 days and by two separate orders he was engaged for specific period and on expiry of the said period his service automatically came to an end. And so the second party is not entitled to get protection of Section 25 (F) as action of the first party is covered under Section 2 (00) (bb) of the I.D. Act. On the other hand the learned counsel for the second party tried to convince in his argument that the second party workman Vinod N. Solanki had worked for 247 days as per computation of work produced in the documents with list at Ext. 16. Such argument advanced on behalf of the second party workman is not tenable because the computation of work is the self-made statement of the second party workman having no seal and sign of the officers of the LIC even having no signature of the second party so those documents which have earlier been dealt with are stray paper and so does not bear any weightage in the eyes of law.

(14) After consideration of the oral and documentary evidence of the parties discussed in the foregoing paragraphs I am of the considered view that the second party has not competed 240 days of work. There is no any evidentiary value regarding the self-computation of the work claimed by the second party workman, rather through the appointment orders vide Ext. 18 and 19 the workman had been periodically appointed purely on temporary basis for specified period and on expiry of the period, his services was automatically come to an end. And that in all the second party workman has worked only for 136 days. So this issue is decided against the second party workman holding that the workman Vinod N. Mehta has not completed 240 days of work in calendar year preceding his termination/discontinuance.

(15) **ISSUE NO. V & VI**

It has been submitted on behalf of the first party that there is no such weightage in such pleadings and evidence of the second party workman that after his alleged termination Mr. Hirpara and Mr. V.G. Trivedi were engaged by the first party because those two persons were not engaged in the same category as that of the second party rather these two persons were offered badly appointment as per Exts. 29 and 31 and so there is no breach of Section 25 (F) of the I.D. Act. More so, these two persons had worked in 1989 only, but as per the say of the second party workman Mr. Vinod M. Solanki has worked up to 01.04.1990. So, the question does not arise regarding breach of Section 25 (H) of the I.D. Act. There is much force and in the argument advanced on behalf of the first party. The learned counsel for the second party could not meet such arguments in view of Ext. 29 and 31 regarding Badli appointment of Mr. Hirpara and Mr. V.G. Trivedi for a specified period in the year 1989. More so, as per findings given to the issue No. IV in the foregoings, it has been held that the workman has not completed 240 days of work in calendar year preceding his alleged termination on 31.03.1990. Even if the documents of the second party Ext. 20 is taken together with Ext. 18 and 19 that total working days of the second party is only for 142 days because for the intervening period 29.12.1988 to 04.11.1988 for 6 days workman had demanded for payment of salary from the Central Manager LIC vide his letter dated 05.04.1990 vide this letter Ext. 20 the workman Vinod N. Solanki has admitted that he has worked for 142 days during his tenure. This letter is submitted after alleged date of termination i.e. 01.04.1990 as claimed in his statement of claim at Ext. 3. This letter has been produced by the workman himself so this also aided to the findings arrived at issue No. IV that at no point of time the second party workman had worked for 247 days as claimed in para 3 of the written argument dated 20.11.2011 on behalf of the second party.

(16) Considering the materials on the record and also in view of the discussion made above, I find and hold that the management of first party has not violated either the provision of Sections 25(F) or 25(G), 25(H) of the ID Act and so, there was no requirement for giving retrenchment notice under Section 25(F) of the ID Act 1947 to the second party workman by

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the management of the first party and so the action of management of first party in terminating/ discontinuance/not engaging Shri Vinod M. Solanki Assistant at the Dhorji branch is valid, legal and justified? These two issues are decided accordingly in favour of the first party.

(17) **ISSUE NO. VII**

In view of the findings given to issue no. III, IV, V, and VI in the foregoings paragraph I further find and hold after reconsideration of the materials and the issues discussed above that the second party workman Shri Vinod M. Solanki is not entitled to get relief for his reinstatement with any part of back wages. This issue is therefore decided against second party workman.

(18) **ISSUE NOs. I- II- & VIII**

In view of the findings given to issue Nos. III, IV, V, VI & VII in the foregings I further find and hold that this reference is not maintainable and the second party has no valid cause of action and the second party workman is not entitled to get any relief in this case.

This reference is dismissed on contest no order as to any cost.

This is my award

Let two copies of the award be sent to the appropriate Government for publication.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2012

का. आ. 3354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ट्यूटिकोरिन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 32/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2012 को प्राप्त हुआ था।

[सं. एल-44011/3/2011-आईआर(बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 14th September, 2012

S.O. 3354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 32/2012) of the Central Govt. Industrial Tribunal/Labour Court, CHENNAI as shown in the Annexure in the Industrial dispute between the employers in relation to the management of TUTICORIN PORT TURST and their workman, which was received by the Central Government on 07.9.2012.

[No. L-44011/3/2011-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 4th September, 2012

Present : A.N. JANARDANAN, Presiding Officer

Industrial Dispute No. 32/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-secion 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Tuticorin Port Trust and their Workman]

BETWEEN

The Chief Secretary
Tuticorin Port Employees
Trade Union (PETU)
F-Shed, Old Harbour (Zone-B),
Beach Road
Tuticorin-628001 — 1st Party/Petitioner Union

Vs.

The Chairman
Tuticorin Port Trust
Tuticorin — 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union : Defaulted to appear

For the 2nd PartyManagement : Sri M. Devendran, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-44011/3/2011-IR(B-II) dated 23.05.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

"Whether the action of the managment of Tuticorin Port Trust for not fixing new scale of pay to Sri G. Thiagarajan, Chargeman as per FR(1)(a)(1) is justifiable? What relief the workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 32/2012 and issued notices to both sides. Respondent entered appearance through Advocate. Despite notice sent and served on the first party twice petitioner did not appear in person or through Advocate. Thereafter when the matter stood posted from time to time and lately on today, the 3.09.2012 for further steps, petitioner was absent nor represented. No Claim or Counter Statement has been filed.

3. **Points for consideration are:**

(i) Whether not fixing new scale of pay to Sri G. Thiagarajan, Chargeman as per PR 22(i)(a)(i) is justifiable?

(ii) To what relief the concerned workman is entitled?

Points (i) & (ii)

4. The petitioner has neither entered appearance nor put forth any evidence in support of his case for answering the reference. Needless to say it is upon the petitioner to substantiate his case that the action is not fixing new scale of pay as per FR 22(1)(a)(1) by the Management is not justifiable, if it is actually so. When he wishes the Court to be satisfied and made believe that it is so it is for him to discharge that burden which has not been done. The inevitable conclusion is that the action in not fixing new scale of pay as per FR 22(1)(a)(1) to him is only legal and justified and he is not entitled to any order to the contra.

5. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th September, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/1st Management : None

Documents Marked:

On the Petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side:

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3355.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ट्यूटिकोरिन पोर्ट ट्रस्ट के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/9/2012 को प्राप्त हुआ था।

[सं. एल-44011/4/2011-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 14th September, 2012

S.O. 3355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 30/2012) of the Central Government Industrial Tribunal/Labour Court, CHENNAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of TUTICORIN PORT TRUST and their workman, which was received by the Central Government on 07/9/2012.

[No. L-44011/4/2011-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 4th September, 2012

Present: A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 30/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Tuticorin Port Trust and their Workman]

BETWEEN

The Chief Secretary
Tuticorin Port Employees
Trade Union (PETU)
F-Shed, Old Harbour
(Zone-B), Beach Road
Tuticorin-628001 : 1st Party/Petitioner Union

Vs.

The Chairman
Tuticorin Port Trust
Tuticorin. : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union :Defaulted to appear

For the 2nd Party/Management : Sri M. Devendran, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-44011/4/2011-IR(B-II) dated 23.05.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Tuticorin Port Trust for not fixing new scale of

pay to Sri R. Chellapa, Chargeman as per FR 22(1)(a)(1) is justifiable? What relief the workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 30/2012 and issued notices to both sides. Respondent entered appearance through Advocate. Despite notice sent and served on the first party twice petitioner did not appear in person or through Advocate Thereafter when the matter stood posted from time to time for further steps and lately on today, the 03.09.2012 for further steps, petitioner was absent nor represented. No Claim or Counter Statement has been filed.

3. **Points for consideration are:**

(i) Whether not fixing new scale of pay to Sri R. Chellapa, Chargeman as per FR 22(1)(a)(1) is justifiable?

(ii) To what relief the concerned workman is entitled?

Points (i) & (ii)

4. The petitioner has neither entered appearance nor put forth any evidence in support of his case for answering the reference. Needless to say it is upon the petitioner to substantiate his case that the action in not fixing new scale of pay as per FR 22(1)(a)(1) by the Management is not justifiable, if it is actually so. When he wishes the Court to be satisfied and made believe that it is so it is for him to discharge that burden which has not been done. The inevitable conclusion is that the action in not fixing new scale of pay as per FR 22(1)(a)(1) to him is only legal and justified and he is not entitled to any order to the contra.

5. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th September, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : None

For the 2nd Party/1st Management : None

Documents Marked:

On the Petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3356.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 का अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 13/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/9/2012 को प्राप्त हुआ था।

[सं. एल-12011/93/2007-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 14th September, 2012

S.O. 3356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2008) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 06/9/2012.

[No. L-12011/93/2007-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 13 of 08

Between-

Deputy General Secretary
Punjab National Bank Employees Union,
U.P. 117/K-36, Sarvodaya Nagar,
Kanpur.

And

The Senior Regional Manager,
Punjab National Bank,
Regional Office,
Birhana Road,
Kanpur.

AWARD

1. The Central Government vide notification no.L-12011/93/2007/IR(B-II) dated 28.11.2007, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Punjab National Bank Kanpur in imposing the penalty of bringing down to lower stage in the scale of pay by

two stages on Sri Laxmi Narian Nishad CTO, vide order dated 10.04.2004 is legal and justified? If not to what relief the concerned workman is entitled?

3. In the instant case after receipt of the reference order from the Ministry, several notices were issued to the Union for filing of their claim statement in support of the reference order, but each time either on one pretext or the other, the representaitve for the union sought adjournment in the case instead of filing of their statement of claim.

4. Ultimately the case was taken up for hearing by the tribunal on 03.08.12. Whereas representative for the management was present before the tribunal none present from the side of the union nor was any statement of claim filed.

5. It thus appears that neither the workman nor the union is interested in prosecuting their case before the tribunal; therefore, the tribunal is having no option left but to hold that neither the union nor the workman is entitled for any relief for want of pleadings and proof in the case.

6. Reference is therefore, decided against the union and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3357.—औद्योगिक विवाद 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 42/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/9/2012 को प्राप्त हुआ था।

[सं. एल-12011/59/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 14th September, 2012

S.O. 3357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2009) of the Central Government Industrial Tribunal/Labour Court, KANPUR now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB NATIONAL BANK and their workman, which was received by the Central Government on 06/9/2012.

[No. L-12011/59/2009-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 42/2009

Between

Kamlesh Chaturedi Secretary,
Punjab National Bank Workers Union
U.P. 128/F/75, Kidwai Nagar, Kanpur

AND

Deputy General Manager,
Punjab National Bank,
Regional Office, Birhana road
Kanpur

AWARD

1. Central Government, Mol, New Delhi, vide Notification No. L-12011/59/2009/IR(B-II) dated 07.10.09, has referred the following dispute for adjudication to this tribunal—

2. Whether the demand of the Union that the workman working at Branch Office Bidhnu under the management of Punjab National Bank Kanpur, be allowed enhanced HRA&CCA in view of the notification issued by the Government of U.P. is just, fair and legal? To what relief the union/ workman is entitled to?

3. After exchange of pleadings between the parties, neither the union nor the workman put his appearance for their evidence. Ultimately the opportunity to adduce evidence by the workers side was closed by the Tribunal vide order dated 16.03.12. Again case was taken up for arguments in the case but none present from either side to advance their arguments in support of their respective case.

4. In view of the above factual circumstances of the case it clearly emerges out that neither the union raising the dispute nor the workman is interested in prosecuting their claim before this tribunal.

5. Considering the facts and circumstances of the case this tribunal is of the confirmed view that neither the union nor the workman is entitled for any relief pursuant to the present reference order for want of proof. Accordingly, it is held that the reference is bound to be answered in negative against the union and in favor of the management.

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6. Reference is answered accordingly against the union and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3358.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/73/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/9/2012 को प्राप्त हुआ था।

[सं. एल-12012/54/2006-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 14th September, 2012

S.O. 3358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/73/2006) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the annexure in the industrial dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 03/09/2012.

[No. L-12012/54/2006-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/73/2006 Date: 24.08.2012.

Party No. 1 : The Chief General Manager,
Union Bank of India,
Regional Office, 34/2, Ashirwad
Commercial Complex, Central Bazar Rd.,
Ramdaspeth, Nagpur-440 010.

Versus

Party No. 2 : Shri Pushkar S/o. Shri Gajanan Joshi,
R/o. C/o. Maharaj Pan Wale, Saraf Bazar
Chowk, Tajnapeth,
Akola (MS)

AWARD

(Dated: 24th August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Union Bank of India and their workman, Shri Pushkar Joshi, for adjudication, as per letter No.L-12012/54/2006-IR (B-II) dated 25.08.2006, with the following schedule:-

"Whether the action of the management of Union Bank of India through its Chief Manager, Nagpur and Branch Manager, Kurankhed Distt. Akola (MS) in terminating the services of Shri Pushkar S/o Shri Gajanan Joshi R/o. Akola is legal, proper and justified? If not, what relief is the said workman entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Pushkar Joshi, ('the workman" in short), filed the statement of claim and the management of Union Bank of India, ("Party No.1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that Union Bank of India is a Nationalized Bank and is governed by the provisions of Sastri Award, Desai Award and different bipartite settlements signed between the managements of the Bank and Federations of Bank Employees and initially he was appointed as a temporary employee in sub-ordinate cadre and worked at Akola Branch of the party no.1 during the years 1999, 2000, 2001 and 2002 for a period of 211 days and wages for the same was paid to him and he has acquired educational qualification up to 9th Standard and also registered his name in the employment exchange on 07.02. 1998 and one Shri Ramesh M. Bhagatwakar was working as part-time sweeper at Kurankhed Branch and due to his transfer to Rui Branch, the said permanent post of part-time sweeper remained vacant w.e.f. 31.10.1998 and one old man carried out the duties of the vacancy created due to transfer of Shri Bhagatwakar for some period and as he was fulfilling the required qualification for the post of the Sub-staff, he made an application for appointment giving the details of his experience, educational qualification, details of registration with employment exchange and being satisfied with the details furnished by him, he was called for interview and interviewed and selected by the Branch Manager for the post of sub-staff and was assigned the duties of sub-staff at Kurankhed branch on 10.01.2002 and he worked continuously till 01.03.2005, the day on which his services came to be terminated illegally by the party no. 1 orally and wages at the rate of Rs. 20 per day had been paid to him by party no. 1 through the cashier of the Branch by taking his signature on Bank's office voucher. It is further pleaded by the workman that the nature of the duties extracted from him was of permanent staff and his services were utilized from 8 A.M. to 6 P.M. and he was not given wages for Holidays and Sundays and he was also not given any

bonus during the entire period of his service with a calculated design to deny status of permanent employee and his name was not shown in the muster roll with malafide intention and though he had worked for continuously for a period of more than three years and also worked for more than 240 days in the 12 calendar months preceding the date of termination, neither one month's notice nor one month's pay in lieu of notice nor retrenchment compensation was given to him and there was violation of the mandatory provisions of sections 25 F and 25- B of the Act and a person junior to him was appointed by the party no. 1 after termination of his services in violation of the provisions of sections 25-G and 25- H of the Act and as such, termination of his services was illegal and unjustified. The workman has prayed for his reinstatement in service as permanent employee with continuity and full back wages.

3. The party no. 1 in their written statement have pleaded inter-alia that for permanent appointment in the Bank service, there are certain norms and rules to be followed including calling of names from local employment exchange, specified age, specified educational qualification and personal interview etc. and the initial appointment of the workman being contrary to the rules framed by the Bank in this regard is illegal and the workman was engaged by the Branch Manager, of Kurankhed Branch, Akola as part/full time, in purely casual and temporary capacity, intermittently on daily wages, due to administrative exigencies and need of work as messenger/ peon/Sweeper and he was never engaged with the intention to give permanent employment and his engagement was due to exigencies of the services eg. Leave/absence of permanent staff etc and he is not a workman as defined in section 2(s) of the Act and therefore, the provisions of the Act are not applicable to the case and the alleged dispute does not fall under the definition of "Industrial Dispute" as defined in section 2 (k) of the Act and the engagement of the workman was purely on temporary basis and as soon the purpose for which the workman was engaged was completed, discontinuance of his services was inevitable and mere rendering of service for some days in a year, as mentioned in the statement of claim by the workman would not be sufficient to grant reinstatement in service with continuity and back wages and the workman is seeking to gain employment through back door entry and the relief of permanent absorption cannot be granted by the Tribunal and there is no provision in the Act, empowering the Tribunal to issue such direction and no direction can also be given for regularisation of workman on the only ground that the has put in more than 240 days of work in a year and there was no illegal termination of the workman w.e.f. 01.03.2005.

It is further pleaded by party no. 1 that the workman was never appointed to work in subordinate cadre at Akola branch of the Bank and he had worked on casual basis intermittently and that does not confer any right on him to claim as temporary employee and Shri Bhagwatkar, who was working as a permanent part time sweeper at Kurankhed branch came to be transferred to Rui branch, but it is not correct to say that because of his transfer, the post of part time sweeper automatically became vacant at the branch, because a post in the bank is considered to be vacant post, when the vacancy is approved and notified and the Branch Manager has no power to appoint any person on permanent basis and any such appointment being contrary to the statutory provisions, the same is null, void and illegal and no legal right can be accrued in favour of the workman and the workman was engaged to carry out specific jobs and duly compensated for the same and the workman did not work continuously during the period from 10.01.2002 to 01.03.2005 and the workman being a casual worker, he cannot claim the wages for part time work as applicable to permanent employees and he was not entitled for bonus and the workman was doing duties of casual nature and he did not perform any duties on Sundays or on holidays and the workman being a casual labourer on daily wages, his name was not entered in the roll of permanent employees and as he was never appointed in services of the Bank, there was no question of entering his name in the muster roll of the Bank and the question of delivery of appointment order does not arise, as he was engaged as casual labourer on daily wages and he was discontinued as his services were no more required, so there was never any breach of the provisions of the Act and provisions of sections 25- F and 25- B are not applicable to his case and the workman is not entitled to any relief.

4. Besides placing reliance on documentary evidence, both the parties led oral evidence to substantiate their respective stands. The workman examined himself as a witness in support of his case. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the claim. In his cross-examination, the workman has admitted that he was engaged by the Branch Manager on temporary basis on daily wages and no written appointment order was issued by the Bank and his engagement was not against any vacant post and he was not selected in the interview and his engagement was not on the basis of the selection in the interview and his name was not in the muster roll of the Bank and his engagement was not made by the Bank due to transfer of Shri Bhagatkar.

5. One Shri M. Kasi Raman, an officer of the party no. 1 has been examined as a witness on behalf of the party no.1. The evidence of this witness is also in the line of the stands taken in the written statement by party no.1. In his cross- examination, this witness has stated that he had never been posted at Kurankhed branch of the Bank and the workman was engaged at Kurankhed branch for sweeping the premises and dusting the tables and chairs and at the time of termination of the workman, no notice or notice pay or retrenchment compensation was paid to the workman.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was interviewed and selected by the Branch Manager of Kurankhed branch and after following the recruitment procedure, he was appointed in the Bank as a sub-staff, but no written appointment order was given to him and he was informed that the appointment order would be kept in Bank's file and the workman came to be appointed on 10.01.2002 and worked continuously till 01.03.2005, on which date, his services were terminated orally and though the workman worked for more than 240 days in the preceding 12 months of the date of termination, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's pay in lieu of notice nor retrenchment compensation was paid to the workman before termination of his services and as such, the termination of the services of the workman is illegal and he is entitled for reinstatement in service with continuity and full back wages.

7. Per Contra, it was submitted by the learned advocate for the party no. I that it is not disputed that the workman was engaged by the Branch Manager, Kurankhed branch on purely casual and temporary basis on daily wages and the Branch Manager is not empowered to appoint anybody on permanent basis and as the initial engagement of the workman was purely on temporary basis, on completion of the work for which he was engaged, his discontinuation was inevitable and the workman has admitted in his cross-examination that he was engaged on temporary basis and there was no cross- examination in regard to these facts as mentioned in paragraphs 1 and 2 in the affidavit of the witness examined on behalf of the Bank and as the initial appointment of the workman by the Branch Manager, who has no authority to appoint any person on permanent basis is illegal, the termination of the services of the workman cannot be construed to be retrenchment and arbitrary and the workman is not entitled to any relief.

In support of such contentions, reliance was placed on the decisions reported in 1997 SCC (L & S) 1079 (Himansu Kumar Vidyarthi Vs. State of Bihar), 2006 SCC (L & S) 753 (Secretary, State of Karnatak Vs. Umadevi), AIR 1992 SC 789 (Delhi Development Horticulture Employees's Union Vs. Delhi Administration), 1994 SCC (L & S) 650 (State of UP Vs. U P State Law Officers Association), 1997 LAV IC 578 (Ashwini Kumar Vs. State of Bihar), 2005 SCC (L & S) 292 (Dhampur Sugar Mills Limited Vs. Bhola Singh), 2005 SCC (L & S) 609 (Manager, RBI Vs. S. Mani), 2006 SCC (L & S) 422 (MP Housing Board Vs. Manoj Srivastava), 2006 SCC (L & S) 434 (MP State Agro Industries Development Corporation Limited Vs. S.C. Pande), (2007) 1 SCC (L & S) 163 (State of UP Vs. Deshraj), (2007) 1 SCC (L & S) 270 (Indian Drugs and Pharmaceutical Vs. Workmen), (2008) 2 SCC (L & S) 931 (Talwara Co-operative Credit and Service Society Limited Vs. Sushil Kumar) and (2009) 1 SCC (L & S) 834 (State of Karnataka and Others Vs. G.V. Chandrashekar).

So, Keeping in view the principles enunciated by the Hon'ble Apex -Court in the decisions cited by the learned advocate for the party no.1, the present case in hand is to be considered.

8. At the outset, I think it necessary to mention that it is well settled by the Hon 'hle Apex Court in chain of decisions that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding, whether or not a person is a "workman" within the meaning of section 2(s) of the Act and the definition of workman does not make any distinction between full time and part time employee or a person appointed on contract basis and there is nothing in the plain language of section 2 (s) from which it can be inferred that only a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. So, even if, in this case, the workman as engaged on daily wages was a casual labourer, still then, he was a workman as defined under section 2(s) of the Act.

9. It is also well settled by the Hon'ble Apex Court in a number of decisions including the decision reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sanaur) that even a daily rated worker would be entitled to protection of section 25- F of the Act, if he had continuously worked for a period of one year or more.

10. Section 25 of the Act is couched in negative form. It imposes a restriction on the employer's right to retrench a workman and lays down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.

It is also settled beyond doubt that though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled and the service of 240 days must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made.

It is clear from the principles enunciated by the Hon'ble Apex Court in a number of decisions that for applicability of section 25- F of the Act, it is necessary to prove by the workman that he worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date.

11. It is clear from the evidence on record and especially from the admission of the workman himself that the engagement of the workman was done by the Branch Manager of the Branch of the Bank and his engagement was not on the basis of selection in the interview and the engagement of the workman was not in accordance with prescribed procedure of recruitment of the bank.

12. The workman in support of his claim filed his evidence on affidavit. Besides such evidence, the workman has relied on the cash vouchers produced by the Bank and which have been marked as Exts. M-I to M-XXIX. It is found from the documents Exts. M-I to M-XXIX that the workman worked for more than 240 days preceding the date of his termination i.e. 01.03.2005. It is also found from the materials on record that before termination of the services of the workman, neither one month's notice nor one month's pay in lieu of notice or retrenchment compensation was given to the workman. As the mandatory provisions of section 25-F of the Act were not complied with by the bank, before the termination of the services of the workman, the termination is illegal and the same amounts to retrenchment.

13. The question remains for consideration is as to what relief or reliefs the workman is entitled to.

It is well settled that for grant of back wages, it is necessary for the workman to plead and prove that he was not gainfully employed from the date of his termination. In this case, the workman has neither pleaded nor proved that he was not gainfully employed from the date of his termination. Rather, in his cross-examination, he has stated that he is working in a betel shop and he is earning Rs. 501- per day. He has also admitted that after his disengagement from the bank, he was gainfully employed. Hence, the workman is not entitled for any back wages.

14. The question now for consideration is as to whether the workman is entitled for reinstatement in service. In this regard, I think it proper to mention about the principles enunciated by the Hon'ble Apex Court in the case, between the In-charge officer and Another versus Shankar Shetty, reported in 2010(8) SCALE-583. In the said decision, the Hon'ble Apex Court have held that, "Industrial Disputes Act, 1947/ Section 25F/Daily wager/Termination of service in violation of section 25(F)/Award of monetary compensation in lieu of reinstatement/Respondent was initially engaged as daily wager by appellants in 1978/His engagement continued for about 7 years intermittently up to 06.09.85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in sec. 25(F) of the Act/Labour court rejected respondents claim : holding that section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days

ORDER

The action of the management of Union Bank of India through its Chief Manager, Nagpur and Branch Manager, Kurankhed Distt. Akola (MS) in terminating the services of Shri Pushkar S/o Shri Gajanan Joshi R/o Akola is illegal, improper and unjustified. The workman is entitled for monetary compensation of Rs.1,00,000 in lieu of reinstatement. He is not entitled for any other relief.

The party no. 1 is directed to pay the compensation of Rs. 1,00,000 to the workman within one month from the date of Publication of the award in the Official Gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3359.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 234/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/9/2012 को प्राप्त हुआ था।

[सं. एल-12012/115/1997-आईआर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 14th September, 2012

S.O. 3359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 234/97) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 06/9/2012.

[No. L-12012/115/1997-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PRAKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 234 of 1997

4073 GI/12-8

Between—

Smt. Sangeeta Munshi,
C/o BP Saxena,
426-W-2 Basant Vihar,
Kanpur.

And

The Assistant General Manager,
Bank of Baroda,
Regional Office,
118/330 Kaushalpuri,
Kanpur.

AWARD

1. Central Government MoL, New Delhi vide notification no. L-12012/115/1997-IR(B-II) dated 27.11.97 has referred the following dispute for adjudication to this tribunal—

> "Whether the action of the management of the Regional Manager Bank of Baroda Kanpur, of removing Smt. Sangeeta Munshi, Accounts Clerk of their Chunniganj Branch, Kanpur, from the muster roll treating her to have voluntary retired vide their letter no.UPK/19/PD/717/1528 dated 30.03.93 is legal and justified? If not to what relief the said workman is entitled?"

3. It is an admitted fact that Smt. Sangeeta Munshi, the claimant was appointed as a clerk in Bank of Baroda in December 1982, at MSA Branch Lucknow. In the last she was posted at Chunniganj Branch at Kanpur, when she moved an application for leave on 28.04.92, stating that she was accompanying her husband proceeding on foreign tour for the period 01.05.1992 to July 1992. When the Chief Manager did not decline the leave the applicant preceded on leave from 01.05.92.

4. As the assignment of her husband had extended at Germany, she sent an application dated 30.07.92, for extension of her leave up to June 1993. In Feb. 1993 she received a letter in Germany from the bank requiring the applicant to report for duty. The applicant replied vide letter dated 15.02.93, stating therein that as her husband was at Germany so it is difficult for her to return alone. Thereafter she did not receive any communication from the bank.

5. Later on she further submitted application dated 17.06.93 up to 28.02.94 but she did not receive any communication. On return from abroad in February1994 she fell ill due to which she could not report for duty. However from recovery from illness she reported for duty at Chunniganj Branch on 04.04.94 and submitted a letter, but the manager of the branch did not allow her to join the duties. Thereafter she sent several applications which were not considered by the management.

6. Later on the bank informed her vide letter dated 08.06.95 that she had been treated to have voluntarily retired from service. Thereafter she sent a legal notice to the bank which was duly replied by the bank.

7. It has been alleged that the bank has served no charge sheet to the claimant not any inquiry was conducted before passing the order dated. Thereafter she raised an industrial dispute before the Assistant Labour Commissioner (Central) Kanpur, in which the opposite party has filed a copy of letter no. so and so dated 30.03.93, allegedly sent by the bank to the claimant from which she came to know that the bank had treated her to have voluntarily retired under paragraph 17 of 5th Bipartite Settlement.

8. It is the letter dated 30.03.93 which is under challenge before this Tribunal and on the basis of the same it has been prayed by the claimant that the said letter is illegal and is liable to be set aside and he should be reinstated in the services of the bank with full back wages, continuity of service and with all consequential benefits.

9. Opposite party has controverted the aversions of the claimant. It is contended that there was no leave in her account; moreover, leave application in case of leave going abroad, the application has to be forwarded to the Head Office through Zonal Office well in advance. Her application was rejected and she was informed regarding rejection. Even thereafter the claimant absconded from duty with effect from 30.04.92. Thereafter several letters were issued to her at both the addresses given by her. But she did not join the duties. Then the bank was left with no other option except to sent the notice vide letter no. so and so dated 14.01.93 calling upon her to join the duties within thirty days of service of the notice failing which it was clearly mentioned that it would be deemed that she has opted for voluntarily cessation from employment. This notice was also served upon her at her Germany address which has also admitted by her but she did not comply with the requirements of this notice. Consequently the bank in view of the provisions enumerated under Para 17 of 5th BPS dated 10.04.89 treated Smt. Sangeeta Munshi having voluntarily retired from the banks service on the expiry of the period stipulated in the notice and accordingly her name was removed from muster roll and the same has also been communicated to her vide letter no. so and so dated 30.03.93. The allegation of Smt. Munshi that she received the communication in 1993 is wrong and denied. It was within the personal knowledge of the claimant that her leave has been refused by the bank and still she opted to

go abroad without permission of the bank which is not only misconduct but also an act of indiscipline. It is also stated that there was no need of charge sheet or inquiry in a case of voluntarily cessation of employment. Moreover, inquiry in the present case in presence of Smt. Munshi was not possible because she has absconded and was not responding the call of the bank to join duty.

10. On the basis of above it is contended by the bank they have not committed any illegality in the case of the claimant if she has been treated by the bank to have voluntarily retired from the service of the bank and thus she is not entitled for any relief pursuant to the reference made to this tribunal.

11. Rejoinder has also been filed by the claimant but nothing new has been averred therein except reiterating the facts of the claim statement.

12. Both the parties have filed oral as well as oral evidence in support their respective claims.

13. Whereas claimant has examined herself as W.W. 1 management examined its witness by name Sri Ravi Shanker Shukla, officer of the Bank as M.W. 1.

14. Claimant has filed 10 documents vide list dated 01.09.98. These documents are copy of bank letter dated 26.06.87 and copy of applicants application of different dates (photocopies) alleged to have been sent by the applicant for extension of leave and copy of bank letter dated 30.03.93 and 08.06.95.

15. Opposite party has also filed original letters from serial no.1 to 20 vide list paper no. 47/1-2.

16. Heard and perused the whole evidence.

17. The short question in this case to be decided is this whether in the given fact and circumstances the bank has properly invoked the provisions of clause 17(b) of 5th Bipartite Settlement.

18. To deal with this question I would like to describe facts of this case in brief.

19. M.W.1 has stated on oath that the claimant has applied for a leave on 28.04.92 intending to go on leave with effect from 01.05.92 to 31.07.92. As this application was addressed to the manager and normally an application for leave for going abroad has to be given well in advance which has to be forwarded to the head office so it should have been given at least one month before so her application was rejected. She was also communicated for the same and her signature was also obtained. This paper is 36/1 in original. It clearly states that permission to leave India is granted by higher authorities and it takes time to route application through proper channel whereas she has submitted application on 28.04.92 intending to go on leave w.e.f. 01.05.92. It is also mentioned that there was no casual leave in her account and only 9 privilege leave were pending in her account. There showed inability to sanction the leave. However they forwarded her application to the higher authorities.

20. It is stated that she remained absent without any information since 30.4.92. It is stated on oath that thereafter bank issued several letters on different dates at both the addresses given by her but no information was received by the bank.

21. In this reference I would like to examine the evidence of W.W.1, wherein she has stated that she has written several applications for extension of time photocopies of which have been filed. But she has not filed the proof of sending of this application either by registered post or speed post or by air mail. Her statement in this regard cannot be accepted and the statement of M.W.1 in this regard cannot be disbelieved. It is stated that when the bank was satisfied and did not receive the proper reply then they sent a final notice dated 14.01.93 which is paper no.14/7 requesting the claimant to join the service within 30 days of the receipt of the notice and if she does not join then it shall be deemed that she has voluntarily opted for cessation of service. This notice was sent by registered post which was also received by her. Original of the registered post has also been filed. But after the receipt of the notice the claimant did not join the duties as per requirement nor did she reply the notice. Thereafter after the satisfaction, bank issued a final letter dated 30.03.93 which is paper no. 31/1 through registered post which contains the subject — your voluntarily cessation from employment. This notice contains 6 paragraphs. I would like to reproduce paragraph no. 5 which is as under—

> From the above it is evident that you have no intention of joining the duties, therefore, as per the provisions as enumerated under paragraph no.17 of it is deemed that you have voluntarily retired from the banks service on the expiry of said notice as mentioned in paragraph 2 above and accordingly your name has been removed from muster roll. However, this is without prejudice to the rights of the management to take any action under the rule or law of the service.

22. In such circumstances it is contended by the authorized representative for the claimant that when the management has claimed in their written statement that she has committed an act of misconduct and indiscipline then it was mandatory for the management to hold an inquiry.

23. I have considered all the fact and circumstances in this respect also.

24. The management has placed reliance upon the provision of clause 17 of 5th BPS dated 10.04.89. Management has also placed reliance upon a decision of the Hon'ble Apex Court in the case Regional Manager Bank of Baroda and Anita Nandrajog 2009 (123) FLR 154 Supreme Court.

25. In this case also there was a matter of voluntarily cessation of employment and the same provisions of clause 17(b) of BPS were considered. Respondent was employed in the Bank of Baroda as accounts clerk — remained absent from duty for long period several times without permission of leave. On last occasion remained absent for more than 150 days — Bank invoked the provision of 17(b) of 5th BPS and asked the employee to join within 30 days else it would be deemed that she has taken voluntarily retirement. Held — that under clause 17 (b) of settlement bank can validly order voluntarily cessation of employment — Order of the bank terminating services of respondent as a voluntarily cessation of her job up held.

26. The facts of the present case are similar in nature. The claimant was working as account clerk. She was expected to know the rules of the bank. She was also not having any such leave in her account. She has not given any application well in time, She has taken the leave granted or she may have thought that she may be absconding for a long period and bank will not take any action.

27. Opposite party has contended that they have served several letters but she did not respond and ultimately the bank issued final notice dated 14.01.93 which is about after 8 months that she must join her duties within 30 days but she did not join nor replied the letter within time.

28. In such circumstances the bank was left with no other option except to issue an order dated 30.03.93 which is paper no. 14/9. The bank invoked their powers under the said provisions. I think that this power is vested with the management giving a deeming clause of treating, an employee to have voluntarily retired from service so that no stigma is imposed upon the employee in the case of voluntarily cessation of service.

29. If department holds an inquiry and removed the employee or terminates his services then definitely a stigma is casted upon the character of an employee.

30. Under the provision of this clause the power still vested with the management if they want they can still take action against the employee departmentally. Therefore, in such circumstances, there is no force in the contention of the authorized representative for the claimant that the management was bound to hold an Inquiry.

31. It is also contended by the A.R. for the WR that there must be a reasonable satisfaction of the management before invoking such provisions.

32. Opposite party has contended that the bank has taken all the steps to procure the attendance of the employee to join her duty but did not respond to any letter/ notice nor did she join her duties within thirty days of the final notice dated 14.01.93. In such circumstances in my view there is a reasonable satisfaction of the management that the employee was not intending to join her duty within the stipulated period. This contention of the AR also fails.

33. Claimant has also placed reliance upon a decision 2005(105) FLR 758 Allahabad High Court between Pramod Kumar Gupta & CGIT, Kanpur.

34. I have respectfully gone through the principle laid down.

35. Considering the facts of the present case and the decision of the Hon'ble Apex Court as quoted above, I am of the view that the action of the management in removing her name from the muster roll treating her to have voluntarily retired is legal and justified. There is no breach of any statutory provision and of principle of natural justice. Accordingly it is held that the claimant is no entitled for any relief.

36. Reference is answered accordingly against the claimant and in favour of the bank.

RAM PARKASH, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2012

का.आ. 3360.—औद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडस्ट्रीयल फाइनेंस कॉरपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 145/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 10-09-2012 को प्राप्त हुआ था।

[सं. एल-12011/140/2006-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 14th September, 2012

S.O. 3360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 145/ 2011) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Industrial Finance Corporation of India and their workman, which was received by the Central Government on 10/09/2012.

[No. L-12011/140/2006-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D. No. 145/2011

The General Secretary,
All India Industrial Finance Corporation
Employees Asson, IFCI Tower,
61, Nehru Place,
New Delhi-110019.

...Workman

Versus

The General Manager (HR),
Industrial Finance Corporation of India,
61, Nehru Place,
New Delhi-110019.

...Management

AWARD

Right of reimbursement of newspaper bills was conferred on its Class III and IV employees by the Industrial Finance Corporation of India Ltd. (in short the Corporation), vide circular No.16/2005 dated 13.07.2005 with effect from 01.04.2005. All India Industrial Finance Corporation Employees Association (in short the Association) asserted that newspaper bill reimbursement ought to have been granted from 01.07.2003 on the lines of Industrial Development Bank of India (in short IDBI) Circular No. 877 dated 20.08.2003. The Association also claimed that medical allowance may also be reimbursed to Class III and IV employees of the Corporation with effect from 01.04.2005 on the lines of IDBI circular dated 21.07.2003. Demand, so raised by the Association, was not conceded to by the Corporation. Therefore, the Association raised a dispute before the Conciliation Officer, wherein it was claimed that comprehensive health check up claim, medical facilities, claim for grant of advance upto Rs. 50,000.00 for purchase of personal computers, grant of car loan of Rs. 1.60 lakh and reimbursement of newspaper bills may be made on the pattern of IDBI circulars. Demand, relating to grant of car loan, claim for grant of advance for purchase of personal computer and comprehensive health scheme, was conceded by the Corporation. Corporation contested the claim in respect of other demands, hence conciliation proceedings failed. Conciliation Officer submitted the failure report and on consideration of that report, appropriate Government referred the dispute to Central Government Industrial Tribunal No. II, New Delhi, for adjudication, vide order No. L-12011/140/2006-IR(B-II) dated 06.07.2007 with the following terms:

Whether the demand of the union regarding reimbursement of medical allowances and newspaper allowance with retrospective effect at par with IDBI is just, fair and legal? If so, to what relief the union is entitled to and from which date?

2. Claim was filed by the Association pleading therein that wages, advances. Welfare schemes, medical facilities, superannuation benefits and other facilities/ service conditions of Class III and IV employees of the Corporation are at par with their counterparts serving IDBI and RBI, which fact is evident from various bipartite settlements signed between the parties. Apart from settlements, Corporation has been following rules and regulations obtaining in IDBI in matters relating to conditions of service/ facilities applicable to its employees. The Association took up certain outstanding issues with the Corporation for implementation. Corporation did not pay any heed. The Association was constrained to raise an industrial dispute before the Conciliation Officer on 04.04.2005. However, during pendancy of the said dispute, Corporation conceded demand of the association for grant of car loan, modification of scheme for grant of advance for purchase of personal computer and reimbursement of medical allowance on the pattern of IDBI circulars. However, demand of the Association for reimbursement of newspaper bills, with effect from 01.07.2003 instead of 01.04.2005, was turned down. Action of the Corporation is illegal and arbitrary in that regard. Corporation issued Circular No.16/2005 dated 13.07.2005 wherein reimbursement of newspaper bills was made permissible with effect from 01.04.2005. It has been projected that the action of the Corporation, in not granting reimbursement of newspaper allowance retrospectively with effect from 02.07.2003, is illegal. The Association claims that the Tribunal may grant reimbursement of bills allowance to class III and IV employees of the Corporation with effect from 01.07.2003 to 31.03.2005.

3. Claim was demurred by the Corporation pleading that on 18.01.2008 recognition of the Association was withdrawn, since it had not conducted its elections for the past more than six years. Therefore, the Association has no right to raise the issue before the Tribunal. Settlement dated 06.08.2007, arrived at between the parties, came into operation retrospectively with effect from 01.11.2002. There is no provision in the settlement in respect of its modifications, during its currency. No provision was also there in the settlement to the effect that settlements arrived at between the union recognised in the establishment of IDBI and the IDBI would be applicable to the employees of the Corporation. Corporation had considered the demands raised by the Association and Circulars No. 7, 16, 17, 18, 19 and 20 all of 2005 were issued on 13.07.2005. The demand

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made by the Association for grant of reimbursement of newspaper bills at par with the IOBI circular is without any basis. Their claim is not justified and hence it may be dismissed, pleads the Corporation..

4. Vide order No. Z-22019/6/2007 -IRC-II dated 30.03.2011, the appropriate Government transferred the dispute to this Tribunal for adjudication.

5. On receipt of the dispute for adjudication, the Tribunal issued notice to the Association to come and prosecute their grievance. Notice was sent by registered post on 11.02.2011 at the premises at No.M-202, Anupam Apartment, East Arjun Nagar, Shahdara, Delhi, where the Association has shifted its office, which fact emerged out in I.D.No.46/2009. The postal article was neither received back nor anyone appeared on behalf of the Association. Presuming that official acts were regularly performed by the postal authorities, this Tribunal formed an opinion that notice was served on the Association. Since none came forward on behalf of the Association, this Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957.

6. No evidence was adduced on behalf of the Association at any point of time. Affidavit of Ms. Pooja Tiku was tendered as evidence on behalf of the Corporation. Since none was there on behalf of the Association, Corporation had closed its evidence.

7. Shri Dinkar Singh, authorized representative, advanced arguments on behalf of the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

8. In her affidavit dated 09.08.2011 tendered as evidence, Ms. Pooja Tiku swears that settlement dated 06.08.2007 was entered into between the Association and the Corporation, which retrospectively came into effect from 01.11.2002. It was to remain in force upto 2.10.2007. There was no provision in the said settlement in respect of modification of the provisions contained therein. It was also not detailed therein that service conditions applicable to the employees of IDBI shall apply to the employees, to whom the aforesaid settlement relates. It was mentioned in the settlement that on expiry of the period of its operation, settlement relating to pay and allowances will be initiated and mutually agreed upon between the parties. She details that the Corporation conceded the demands of the Association and issued circular No. 7, 16, 17, 18, 19 and 20, all of 2005, on 13.07.2005. Corporation has no obligation to accord same benefits and facilities as are applicable to the employees of IDBI.

9. Settlement dated 06.08.2007 has been perused by me. It has been given retrospective effect from 01.11.2002 and would remain in operation for a period of five years from that date. It has been detailed therein that any changes in or to any of the provisions of the settlement, if becomes necessary, may be made in writing by mutual consent of the parties thereto. Except as otherwise mutually decided, the settlement has been made final in respect of economic and financial matters, raised in the charter of demand served upon the Corporation. Therefore, it is apparent that any change in the provisions of the settlement may be arrived at by mutual written consent. No case has been projected by the Association that such mutual written consent was arrived at between the parties for grant of reimbursement of newspaper bills with effect from 01.07.2003, at par with the IDBI circular. Therefore, claim put forward by the Association that reimbursement of newspaper Association may be granted with effect from 01.07.2003 is not founded, in terms of provisions of settlement referred above. Settlement nowhere speaks of grant of reimbursement of newspaper bills.

10. Circular No.16/2005 dated 31.07.2005 has been perused. It projects that the Corporation has decided to reimburse expenses incurred for purchase of newspaper to all confirmed Class III and IV employees with five years service in the Corporation, with effect from 01.04.2005. Class III employees shall be reimbursed Rs.125.00 per month and Class IV employees shall be reimbursed Rs. 100.00 per, month. The said circular creates right for reimbursement of newspaper bills in favour of the employees of the Corporation.

11. Before the Conciliation Officer, the Association projected that the Corporation had granted reimbursement of newspaper bills to its officers on the pattern of IDBI Circular. Issue was raised that the Corporation has discriminated Class III and IV employees in the matter of grant of reimbursement of newspaper bills. Whether Class III and IV employees have right of equal treatment at par with the officers of the Corporation? For an answer legal provision will be considered. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers,

government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all mattes in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

12. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

13. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

14. Class III and IV employees of the Corporation are a separate class in themselves. They are employees of category who fall within the ambit of the definition of workmen, as enacted by clause(s) of section 2 of the Industrial Disputes Act, 1947. Workmen employees fall in distinct and different category than officers of the Corporation. Officers have mainly managerial or administrative functions or they may have been employed in supervisory capacity to perform functions mainly of managerial in nature. Therefore, it is evident that employees, who fall in workmen category, are on a different pedestal than the officers who perform mainly managerial or administrative functions or supervisory functions. They are recruited through different recruitment rules and their responsibilities cannot be similar. Under these circumstances, I am constrained to conclude that officers of the Corporation form a class/distinct and different than the workmen employee of the Corporation. Corporation has rightly made classifications in the matter of grant of reimbursement of newspaper bills to its officers and workmen employees. Unequals cannot claim equal treatment. Contention of the Association is unfounded on that count too.

15. In view of the reasons detailed above, it is apparent that the Association has not been able to establish that the workmen employees are entitled for reimbursement of newspaper bills with effect from 01.07.2003 to 31.03.2005 Claim put forth by the Association is devoid of merits. Same is accordingly, brushed aside. An award is passed against the Association and in favour of the Corporation. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated 31.08.2012

नई दिल्ली, 18 सितम्बर, 2012

का.आ. 3361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, मुम्बई के पंचाट पार्ट -II(संदर्भ संख्या सीजीआईटी-2/83 ऑफ 2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 11-9-2012 को प्राप्त हुआ था।

[सं. एल-12012/48/2001-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 18th September, 2012

S.O. 3361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Part II (Ref. No. CGIT 2/83) of the Central Government Industrial Tribunal/ Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 11-9-2012.

[No. L-12012/48/2001-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT

K.B. KATAKE, Presiding Officer

Reference No. CGIT-2/83 of 2001

EMPLOYERS IN RELATION TO THE MANAGEMENT OF DENA BANK

The Assistant General Manager(P)
Dena Bank,
7th Floor,
World Trade Centre
Cuffe Parade
Mumbai-400 005.

AND

THEIR WORKMEN
Shri Deepak Narayan Jadhav
K.M. Boricha wadi
Room No.2
Shradhananda Road
Vile Parle (E)
Mumbai 400 057

APPEARANCES:

FOR THE EMPLOYER : Ms. Nandini Menon, Advocate

FOR THE WORKMEN : Mr. V. J. Amberkar Advocate

Mumbai, dated the 31st July 2012.

AWARD-PART-II

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/48/2001-IR(B-II), dated 18/22.06.2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of management of M/s. Dena Bank by dismissing Shri Deepak Narayan Jadhav from the services of the Bank is justified and proper? If not, then what relief the workman is entitled to?"

2. After receipt of the reference from the Ministry of Labour & Employment, both the parties were served with the notices. They appeared through their representatives. Second party workman has filed his statement of claim at Ex-9. According to him, he was serving as Cleaner-cum-Sepoy in the first party Bank. He served for about 11 years. He was dismissed from the service for alleged misconduct mentioned in the chargesheet dated 6/1/1989. It was alleged that the second party workman was in collusion with customer of the Bank Shri Virendra Patel and has committed fraud. The allegation of forgery and fraud are totally false and baseless. The workman was made scape goat for the act of his superiors. The said customer Mr. Virendra Patel was not examined in the inquiry. The other staff members were not examined. The inquiry was not fair and proper. The workman alone cannot commit such a forgery or fraud on Bank being a Cleaner-cum-Peon. All the record was in custody of higher officers of the first party. The keys of various sections are kept with the officers of the first party. The inquiry officer ignored these things. He also ignored how second party alone can falsely credit in SB A/c of the customer without the help of other officers of the first party. Those officers were not examined in the inquiry proceeding. There was no evidence against the second party inspite of that, the inquiry officer held him guilty and awarded the punishment. The inquiry was not proper as well as the findings of the inquiry officer were perverse. Therefore the second party prays that the order of dismissal of service be set aside and he be reinstated in service with full back wages and continuity of service from the date of dismissal and with all consequential benefits.

3. The first party management resisted the statement of claim vide its written statement Ex-12. According to them, the workman was dismissed by an order dated 30/03/1989. His appeal was dismissed on 14/06/1989. The workman has raised this dispute at a very late stage. Therefore it is hit by the principle of delay and laches in raising the industrial dispute. According to them, most of the officers having personal knowledge of the case who were working at the relevant time are retired from service. Some have taken VRS from service. Therefore they are not available. They further contended that record of the relevant time was also destroyed as it is 11 years old record. Therefore they strongly objected the claim on the ground of delay and laches in raising the industrial dispute. They further contended that Mr. D. V.Kulkarni, Sr. Manager of Worli branch was appointed as inquiry officer. The workman was represented by Mr. B.Saikumar, the representative of his choice. According to them sufficient opportunity was given to the workman to defend himself and the findings of the inquiry officer are not perverse.

4. According to them the workman has admitted before the inquiry officer that he had removed ledger folio of SB A/c nos. 6184 & 6915 from ledger no. 3. He also admitted that credit entries in the said folio were made by Mr. V.N.Patel and his associates. He further admitted that he kept back the said folio in the ledger. According to them, workman also admittted that he knew about the cheque of Rs. 21,000 deposited by Shri V.N.Patel in the account of Royal Traders

and he knew that the said cheque was cleared by the branch. He also admitted that he knew about the fictitious credit entries made in the SB A/c no. 6184 and 6915 and that the balances of these accounts were increased in that manner. In view of these admissions, Presenting Officer did no led any oral evidence but produced xerox copy of cheque dt. 17-11-1989 and the xerox of ledger folio of SB A/c no.6184 & 6915. On the basis of admission of the workman, inquiry officer recorded his findings and submitted his report. The disciplinary authority considered the inquiry proceeding and report and proposed punishment of dismissal without notice to the workman. Accordingly showcause notice dt. 14-3-1989 was issued to the workman calling upon him to show cause as to why the punishment of dismissal without notice should not be imposed on him. Personal hearing was given to him on 21-3-1989. In the personal hearing workman merely requested for lenient view. The disciplinary authority after considering the report of the inquiry officer and the explanation of the workman passed the order dated 30.03.1989 dismissing the workman from service without notice. In appeal against the said order, workman had merely asked for leniency in the punishment and had not challenged the inquiry proceeding or findings of the inquiry officer. According to them, the reference is also hit by provision of res-judicata as workman has already raised industrial dispute in 1995 and the said was decided on merit. They parawise denied all the contents in the statement of claim and prayed that the reference be dismissed with cost.

5. My Id. Predecessor had framed the issues at Ex- 15. The issue no.2 and 3 therein in respect of inquiry and findings were treated as preliminary issues and in Part-I award dt. 12/4/2007 my Id. Predecessor held that inquiry was not fair and proper and findings are perverse and first party was directed to justify its action by leading evidence. Both parties have led their evidence on the remaining issues.

6. In part-I award the inquiry was held not fair and proper and the findings were declared perverse. Therefore the first party was directed to lead their evidence to prove the charges of misconduct against the second party. Therefore earlier remaining issues are re- casted as follows:

S.No.	Issues	Findings
1.	Whether the reference is hit by delay and laches?	Yes.
4.	Whether the first party has proved the charges or any of the charges of misconduct leveled against the second party?	Yes.
5	If yes, whether the punishment of termination is proportionate to the proved misconduct of the second party?	Yes.
6.	What relief the workman is entitled to ?	No relief.

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REASONS

Issue No. 1:

7. In this respect the fact is not disputed that the workman was removed from the service w.e.f. 14-03-1989. he appeal was also dismissed in the year 1989. However till 1995 workman did not raise any industrial dispute. In short he gave an application to the Labour Commissioner six years after his termination. Present dispute is raised in the year 2001. It was raised almost 10 -11 years after the date of termination. Therefore Ld. Adv. for the first party submitted that the reference is hit by the principle of delay and laches on the part of second party. In this respect the Ld. adv. for the second party submitted that for raising the industrial dispute, no limitation is prescribed. Therefore delay in raising the industrial dispute would not come in the way of second party workman.

8. In this respect the Ld. adv. for the first party submitted that though delay is not prescribed, it was the duty of the second party workman to raise the industrial dispute within a reasonable time specially when the issue or point in dispute is relating to the documents of the Bank. He submitted that it is alleged that the second party workman had made number of false credit entries in the account of a customer Mr. Virendra Patel and his relative and Mr. Virendra Patel on the basis of these false credit entries tried to transfer huge amount of more than Rs. four lakhs. The Ld. adv. for the first party submitted that as there is delay in raising the dispute, most of the officers and employees who were serving at the relevant time are retired or have taken VRS and are not available for evidence. The Ld. adv. further submitted that most of the Bank record is also destroyed due to passage of time as well as due to natural calamities of heavy rains. He submitted that Bank record is preserved for a certain period. Thereafter as per rules the same is destroyed. He therefore submitted that the second party workman was also serving in the Bank and was well aware of all these facts. Therefore he has raised the industrial dispute at a late stage. It would cause prejudice to the right of the first party. Therefore he submitted that, such a delay is fatal to the claim of the second party.

9. In support of his argument the Ld. adv. for the first party resorted to the Apex Court ruling in Nedungadi Bank Ltd. V/s. K.P.Madhavankutty and Ors. (2000) 2 SCC 455. In that case the Central Government has sent the reference after lapse of about 7 years of the order of dismissal. On the point Hon'ble court in para 6 of the judgment observed that;

> "At the time reference was made, no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of the reference under Section 10 of the Act as to when a dispute can be said to be stale would depend upon the fact and circumstances of each case."

10. The Ld, adv. also resorted to another Apex Court ruling in Assistant Executive Engineer, Karnataka V/s. Shivlinga (2002) 10 SCC 167 wherein the Hon'ble Apex Court in respect of delay in raising industrial dispute observed that;

> " In cases where there is a serious dispute or doubt : In such relationship and record of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. "

11. The Ld. adv. pointed out that in the case at hand the record of the Bank is relevant in deciding the point of mischief for which second party was charged. He further pointed out that by the passage of time and due to natural calamity, most of the record of the Bank was destroyed. He also submitted that the concerned officers who were working in the branch in the year 1988-89 are no more in service of the Bank. Some are retired and settled at various places. Therefore he submitted that the records as well as concerned witnesses are not available as there is extra ordinary delay in raising the dispute. The Ld. adv. further submitted that the reason given by the workman for the delay is false and unacceptable. According to him, the workman has pleaded that, union was looking after his case. However he pointed out that in his cross-examination at Ex-79 the workman has stated that he sent letter dated 23-2-1995 raising dispute. The said letter is at Ex-80. It was sent by the workman himself. There is no reference of any union in this letter. This letter Ex-80 is the letter sent to ALC (C) Mumbai by which the dispute was raised by the workman. In this letter there is no reference that his matter was handled by any union. There is also no reference that he was member of the union either. In his cross at Ex-79 he says that, he has filed documents in the court to show that he has raised dispute prior to 1995 and he also says that he has filed documents to show that he was member of All India Bank Employees Association. However he has not filed any such document on record to show that he was member of the union or any dispute was raised by the workman or the union prior to 1995. Furthermore after he raised dispute before ALC (C) in the year 1995 it appears that he has not made any follow up of the dispute before ALC (C) and again kept quiet for few more years.

12. No doubt there is inordinate delay in raising the industrial dispute. The point involved in this dispute are in respect of charges of forgery and making false credit entries in the accounts of customers by the second party workman. The dispute of the workman is relating to the documentary evidence of Bank such as ledgers, scroll book, day register, cheque leaves, credit slips etc. After destruction of these documents no doubt great prejudice would be caused to first party Bank in proving the charges. The dispute herein is based on the record of the Bank. Therefore in the light of above observations of the Apex Court I hold that claim of the workman has become stale as there is inordinate delay in raising the dispute. Accordingly I decide this issue no.1 in the affirmative.

Issue no.4:—

13. Though the reference is stale and hit by principle of delay and laches, as all the issues were framed, the other issues are also required to be discussed and answered. Therefore I discuss and decide this issue nos.4 in the light of evidence on record.

14. As per the chargesheet, three charges were leveled against the workman. They are no.1. Tampering with Bank's record and or 2. Committing fraud on the Bank, 3. Doing acts prejudicial to the interest of the Bank involving or likely to involve the Bank into serious losses. Though these are three charges, they are interlinked and interconnected. It is the case of the first party that the second party workman made some false credit entries in the account of Mr. Virendra Patel bearing SB A/c. no.6184 and from time to time he made false entries of total Rs.4,75,948.55 paise. It is also alleged that, the second party also made false credit entries to the tune of Rs.3,07,233 in the SB A/c. No.6915 standing jointly in the name of Ms. Indira Patel and Mrs. Maniben Patel. In this respect witnesses Shri J. Udvadia (Ex-59) and Shri M. Engti (Ex- 76) have narrated in their respective statements about the false and hollow credit entries in the ledger folio. Number of credit entries were made in both these accounts in ledger folio. However there were no corresponding entries in the SB cash scroll as well as in the register for that day for deposit of the amounts shown to have deposited from time to time. The second party workman has not challenged that these entries are false and bogus. He merely challenged that these false credit entries in the ledger folio in these two accounts were not made by him. Repeatedly he has contended in his statement of claim Ex-9 as well as in his affidavit at Ex-18 that the ledger book used to be in the custody of officers and he being a Peon was not supposed to make such entries in the ledger book at his own. According to him the ledger book used to be in the custody of higher officers and it was not possible for him to reach upto the ledger book and to make such false entries. In this respect the Ld. adv. for the first party pointed out that in his cross examination (Ex-79) the workman had admitted that Mr. M.Engti was working as officer when he was working at Vile Parle (W) Branch from 1979 to 1989. He further admitted that in those days the work was done manually. In his cross he further says that after office is opened by the officer they used to clean the same. He further says that every day officers used to open the cup board and cleaner-cum-sepoys, the daftary, head peon, cash peon used to take out the ledger book, cash scroll,

control book, token book, transfer scroll, rubber stamps of the branch. He further admitted in his cross that they used to keep the books on the table. He further says that he knew the place of books and registers and used to keep the ledgers in serial order as per Savings account and Current account on the tables of the respective clerks. The Ld. adv submitted that these facts show that the second party workman had access to the ledger book and had every opportunity to make false entries in the ledger book.

15. The Ld. adv. pointed out that the gross salary of the workman in the year 1989 was Rs.21 00. In the year 1986 his salary must be less than that. Inspite of that he admitted in his cross at Ex-79 para 30 thereof that he had opened savings Ac. no.13194 with Manoj Villa Branch. He admitted the cash deposits made into his saving Ac. He admitted cheque issued from his SB Ac. to D.K. Electronics (Ex-88 to 92). He admitted the copy of the cheque Ex-55 for Rs.6000 issued to D. K. Electronics from his SB Ac. It is at Ex-93. From this evidence the Ld. adv. for the first party submitted that though there is no direct evidence any body seen the workman making the entries in the ledger book, However first party has shown that the second party workman has access and opportunity to make the false entries in the ledger book of the above referred two accounts. The second party has also admitted in his cross at Ex-79 that he used to handle the ledger books and used to arrange the same on the table of the concerned clerks after cleaning the Bank premises. Therefore version of the second party does not stands to reasons that the books of account were in exclusive possession of the officers and he had no access to the ledger books to make false entries.

16. The second party has also admitted the credit entries in his own account. It shows that he has deposited much more amount in his account than his pay. He has not pointed out any other source of his income other than the pay. It also indicates that the financial transaction of second party workman were suspicious. The Ld. adv. for the first party further submitted that had any officer involved in the mischief and fraud he would have made necessary corresponding entries in the other account books. From all these circumstances, the Ld. adv for the first party submitted that all these facts indicate the second party has played the mischief. He further submitted that keeping quiet for number of years after termination by the second party also is a relevant circumstance indicating preponderance of probability of fraud and mischief committed by the second party workman.

17. In this respect Ld. adv. for the second party submitted that this is not sufficient evidence to hold the second party guilty. There is no witness who has seen the second party making entries in the ledger book of these two accounts. He submitted that the fraud and mischief must have been committed by some officer and the second party workman is made scape-goat merely to protect the officer. In this respect the Ld. adv. for the first party pointed out that though there is no evidence to prove the guilt of the second party beyond reasonable doubts as it requires to establish the offence in a criminal case, however he submitted that the evidence on record points out the preponderance of probability of the second party and preponderance of probability suffice the purpose to hold the second party workman guilty in departmental inquiry. In support of his argument, the Ld. adv. for the first party resorted to the Apex Court ruling in State of Haryana & Anr. V/s. Rattan Singh (1977) 2 SCC 491 wherein the Hon'ble Apex Court on the point of proof in domestic inquiry observed that;

> "In a domestic inquiry all the strict and sophisticated rules of evidence act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glumly swallow what is strictly speaking not relevant under the Evidence Act."

18. The Ld. Adv. also resorted to another Apex Court ruling in J. D. Jain V/s. Management of State Bank of India and Anr (1982) 1 SCC 143 wherein the Hon'ble Court held that in domestic inquiry strict rule of evidence is not applicable and charge need not be established beyond reasonable doubt and proof of misconduct is sufficient. In that case the confession of the delinquent made in presence of higher officer was held reliable. The Ld. adv. also resorted to another Apex Court ruling in Maharashtra State Board of Secondary and Higher Secondary Education V/s. K.S. Gandhi & Ors. (1991) 2 SCC 716 wherein the Hon'ble Court the same ratio is reiterated by the Hon'ble Apex Court that strict rules of Evidence Act and standard of proof envisaged therein do not apply to departmental proceeding or domestic Tribunal. The same principles is again reiterated by Hon'ble Apex Court in UPSRTC V/s. Mitthu Singh (2006) 7 SCC 180 wherein the Hon'ble Court on the point observed that;

> " ....Such matters require to be disposed on the doctrine of preponderance of probability and not proof beyond reasonable doubt. When the respondent workman was not in a position to show why the checking squad had falsely implicated him while there was no enmity and that he was believed by the Labour Court. Then the Labour Court committed serious illegality as well as jurisdictional error in interfering with the finding of the guilt recorded by the inquiry Officer. "

19. In this respect Ld. adv. for the first party also resorted to few more rulings they are:

(1) West Bokaro Colliery (Tisko Ltd.) V/s. Ram Pravesh Singh 2208 3 SCC 729,

(2) Divisional Controller, KSRTC (NWKRTC) V/s. A.T. Mane 2005 3 SCC 254,

(3) Muradh Colliery V/s. Bihar Colliery Kamgar Union 2005 3 SCC 331,

(4) Uttaranchal Transport Corporation V/s. Sanjay Kumar Nautiyal 2008 12 SCC 131.

(5) State Bank of Bikaner & Jaipur V/s. Nemi Cand Nalwaya 2011 4 SCC 584,

(6) U.P. State Brassware Corporation Ltd. V/s. Uday Narain Pandey 2006 1 SCC 479.

The same principle was reiterated in all these rulings. Furthermore the Ld. adv. also pointed out that the workman herein has also admitted the misconduct of making false entries. The said fact also can be taken into account in deciding the issue of guilt of the second party workman. So also delay in raising the dispute also support the version of the first party. Had the workman been innocent he would not have spent number of years for raising the dispute after his service was terminated. It is also not his case that he was victimized by any officer. In this backdrop I hold that, the first party has proved the charges of fraud and mischief against the second party workman as has been alleged. Accordingly I decide this issue no.4 in the affirmative.

Issues nos.5 & 6:—

20. In respect of the punishment I would like to point out that the second party workman was serving in a Bank. It is proved that he has made some false credit entries in the two S/B accounts of Mr. Virendra Patel and others and had facilitate them to withdraw the amount. They have tried to withdraw huge amounts more than Rs.4 lakhs from the first account and more than Rs.3 lakhs from the second account. These amounts were credited by the workman from time to time by making false entries without depositing the amount. It is no doubt a serious misconduct and sufficient to impose extreme punishment of termination of services. An employee of Bank must be honest and his integrity must be beyond doubt. No officer or customer is expected to trust on such person in future and record and money of the Bank cannot be said to be safe in the hands of such persons. looking into the institution where second party is working, I hold that the punishment of termination is just, proper and proportionate to the proved misconduct. Accordingly I decide this issue No. 5 in the affirmative. Thus I hold that the workman is not entitled to any relief and proceed to pass the following order.

ORDER

Reference is rejected with no order as to cost.

Date: 31.07.2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 9 अक्तूबर, 2012

का.आ. 3362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजर, मैसर्स सन्तूर होटल और आर के सिक्युरिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.1 नई दिल्ली के पंचाट (संदर्भ संख्या 164, 165, 166, 167, 168/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2012 को प्राप्त हुआ था।

[सं. एल-42025/03/2012-आईआर (डीयू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 9th October, 2012

S.O. 3362.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 164, 165, 166, 167, 168/2011) of the Central Govement Industrial Tribunal-cum-Labour Court No. 1 New Delhi as shown in the Annexure, in the Industrial dispute between the Manager, M/s Centaur Hotel & Aarkay Security ad their workman, which was received by the Central Government on 25.09.2012.

[No. L-42025/03/2012-IR(DU)]
SURENDRA KUMAR, Section Officer

ANNEXURE-I

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 164/2011

Shri Angrej Singh,
Through Rashtriya Mazdoor Sangh,
B-40, Bulwared Road, Tis Hazari,
Delhi-110054.

...Workman

Versus

1. The Manager,
M/s Centaur Hotel,
IGI Airport, New Delhi.

2. The Manager,
Aarkay Security
S.T.C. Building,
Janpath Road,
New Delhi-110001.

....Management

AWARD

Watch and ward staff was outsourced by Centaur Hotel, the principal employer, through M/s. Aarkay Security, the

contractor. Shri Angrej Singh was engaged as a security personnel by the contractor on 01.02.2006 and deputed to work at the premises of the principal employer. He served the principal employer till 19.03.2010. His services were allegedly dispensed with by the contractor. He raised a demand for reinstatement of his services, which was not conceded to. Ultimately, a industrial dispute was raised by him before the Conciliation Officer on 21.07.2010. Conciliation proceedings were initiated. After expiry of 45 days from the date of making application before the Conciliation Officer, the claimant filed a claim before this Tribunal under sub-section (2) of Section 2A of Industrial Disputes Act, 1947 (in short the Act). Since his case was not hit by the provisions of Section (3) of Section 2A of the Act, it was registered as an industrial dispute.

2. In his claim statement, the claimant pleads that he served continuously with the contractor from 01.02.2006 to 19.03.2010. His last drawn wags were Rs. 6100.00. His services were regularized on 21.01.2009. Legal facilities, such as appointment letter, attendance card, pay slips, leaves, bonus, overtime wages etc. were not made available to him. He raised a demand in that regard, which annoyed his employer, the contractor. His services were dispensed with on 19.03.2010 in an illegal manner. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

3. The contractor resists the claim pleading that the appropriate Government is the State Government and not the Central Government. It is pleaded that the claim is to be discarded. It has been projected that the claimant joined services with the contractor on 21.01.09. His claim that he is in service since 01.02.2006 is false. It has been denied that legal facilities such as referred in the claim statement were not made available to him. His services were never terminated on 19.03.2010, as alleged by him. The claimant absented himself from attending to his duties and as such letters dated 24.04.2010 and 06.05.2010 were sent calling upon him to join his duties. He had not responded to the communications, so sent. Since the claimant had himself abandoned the job, he is not entitled to relief of reinstatement in service with continuity and full back wages.

4. The principal employer resisted the claim pleading that there existed no relationship of employer and employee between the claimant and the hotel. Contract was awarded to M/s. Aarkay Security for providing security services from 21.01.2010 to 20.01.2011, *vide* letter dated 19.01.2009. It was further extended from 21.01.2011 to 20.01.2012, vide letter dated 07.01.2011 on same terms and conditions. Claimant was engaged by the contractor and the hotel had not exercised any control over him. The claimant does not seek any relief against the hotel. Hence his claim is liable to be dismissed.

5. On pleadings of the parties, following issues were settled:

(i) Whether the services of the claimant were terminated by management No. 2 on 19.03.2010, as claimed?

(ii) Whether the alleged termination of service of the claimant amounts to retrenchment?

(iii) Whether the termination of services of the claimant is in violation of provisions 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. If yes, its effect.

(iv) Whether the claimant had abandoned his services as claimed by management No. 2?

(v) Relief.

6. In order to establish his claim, the claimant entered the witness box to testify facts. Shri G.K. Sethi, Deputy Manager, deposed facts on behalf of the principal employer Col. Ravinder Kumar narrated facts on behalf of the contractor.

7. Arguments were heard. Shri Hemant Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri V.P. Gaur, authorised representative, presented facts on behalf of the hotel. Shri A.K. Ahuja, authorized representative, raised his submissions on behalf of the contractor. During the course of arguments, parties were persuaded to settle their dispute amicably. Good sense prevailed and the dispute was settled between the parties amicably. In view of these facts that the parties had settled their dispute amicably, there remains no occasion to adjudicate the issues referred above.

8. Shri Hemant Sharma, authorised representative, unfolded that he is competent to settle the dispute on behalf of the claimaint, since Shri Angrej Singh had authorized him in that regard. He projects that the claimant. Shri Angrej Singh is willing to accept a sum of Rs. 20,000.00 from management No. 2 towards full and final settlement against his claim for reinstatement, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. He announced that on payment of Rs. 20,000.00 to him, claim of Shri Angrej Singh would stand satisfied. Shri A.K. Ahuja, authorised representative of the contractor, unfolded that he was competent to settle the case on behalf of the contractor with the claimant. He undertook, on behalf of the contractor, to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim, made in the present dispute. Thus, it emerged that the contractor agreed to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. On payment of a sum of Rs. 20,000/- claim made would stand satisfied. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 11 September, 2012

4073 GI/12-11

ANNEXURE-II

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 165/2011

Shri Rampat Singh,
Through Rashtriya Mazdoor Sangh,
B-40, Bulwared Road, Tis Hazari
Delhi-110054. ...Workman

Versus

1. The Manager,
M/s. Centaur Hotel,
IGI Airport,
New Delhi

2. The Manager
Aarkay Security
S.T.C. Building,
Janpath Road,
New Delhi-110 001.

....Management

AWARD

Watch and ward staff was outsourced by Centaur Hotel, the principal employer, through M/s Aarkay Security, the contractor. Shri Rampat Singh was engaged as a security personnel by the contractor on 01.02.2006 and deputed to work at the premises of the principal employer. He served the principal employer till 19.03.2010. His services were allegedly dispensed with by the contractor. He raised a demand for reinstatement of his services, which was not conceded to. Ultimately, an industrial dispute was raised by him before the Conciliation Officer on 21.07.2010. Conciliation proceedings were initiated. After expiry of 45 days from the date of making application before the Conciliation Officer, the claimant filed a claim before this Tribunal under sub section (2) of Section 2A of Industrial Disputes Act, 1947 (in short the Act.) Since his case was not hit by the provisions of Section (3) of Section 2A of the Act, it was registered as an industrial dispute.

2. In his claim statement, the claimant pleads that he served continuously with the contractor from 01.02.2006 to 19.03.2010. His last drawn wage were Rs. 6100.00. His services were regularized on 21.01.2009. Legal facilities, such as appointment letter, attendance card, pay slips, leaves, bonus, overtime wages etc. were not made available to him. He raised a demand in that regard, which annoyed his employer, the contractor. His services were dispensed with on 19.03.2010 in an illegal manner. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

3. The contractor resists the claim pleading that the appropriate Government is the State Government and not the Central Government. It is pleaded that the claim is to be discarded. It has been projected that the claimant joined services with the contractor on 21.01.2009. His claim that he is service since 01.02.2006 is false. It has been denied that legal facilities such as referred in the claim statement were not made available to him. His services were never terminated on 19.03.2010, as alleged by him. The claimant absented himself from attending to his duties and as such letters dated 24.04.2010 and 06.05.2010 were sent calling upon him to join his duties. He had not responded to the communications, so sent. Since the claimant had himself abandoned the job, he is not entitled to relief of reinstatement in service with continuity and full back wages.

4. The Principal employer resisted the claim pleading that there existed no relationship of employer and employee between the claimant and the hotel. Contract was awarded to M/s Aarkay Security for providing security services from 21.01.2010 to 20.01.2011, vide letter dated 19.01.2009. It was further extended from 21.01.2011 to 20.01.2012, vide letter dated 07.01.2011 on same terms and conditions. Claimant was engaged by the contractor and the hotel had not exercised any control over him. The claimant does not seek any relief against the hotel. Hence his claim is liable to be dismissed.

5. On pleadings of the parties, following issues were settled:

(i) Whether the services of the claimant were terminated by management No. 2 on 19.03.2010, as claimed ?

(ii) Whether the alleged termination of service of the claimant amounts to retrenchment?

(iii) Whether the termination of services of the claimant is in violation of provisions 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ? If yes, its effect.

(iv) Whether the claimant had abandoned his services as claimed by management No. 2 ?

(v) Relief.

6. In order to establish his claim, the claimant entered the witness box to testify facts. Shri G.K. Sethi, Deputy Manager, deposed facts on behalf of the principal employer. Col. Ravinder Kumar narrated facts on behalf of the contractor.

7. Arguments were heard. Shri Hemant Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri V.P. Gaur, authorised representative, presented facts on behalf of the hotel. Shri A.K. Ahuja, authorized representative, raised his submissions on behalf of the contractor. During the course of arguments, parties were persuaded to settle their dispute amicably. Good sense pre-

vailed and the dispute was settled between the parties amicably. In view of these facts that the parties had settled their dispute amicably, there remains no occasion to adjudicate the issues referred above.

8. Claimant made a statement to the effect that he was willing to accept Rs. 20,000.00 from the contractor towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. He announced that on payment of Rs. 20,000.00 to him, his claim would stand satisfied. Shri A.K. Ahuja, authorised representative of the contractor, unfolded that he was competent to settle the case on behalf of the contractor with the claimant. He undertook, on behalf of the contractor, to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim, made in the present dispute. Thus, it emerged that the contractor agreed to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. On payment of a sum of Rs. 20,000/- claim made would stand satisfied. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 11 September, 2012

ANNEXURE-III

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 166/2011

Shri Subhash Yadav,
Through Rasthtriya Mazdoor Sangh,
B-40, Bulwared Road, Tis Hazari,
Delhi-110054. ...workman

Versus

1. The Manager,
   M/s Centaur Hotel,
   IGI Airport, New Delhi.
2. The Manager,
   Aarkay Security
   S.T.C. Building,
   Janpath Road,
   New Delhi-110001. ...Management

AWARD

Watch and ward staff was outsourced by Centaur Hotel, the principal employer, through M/s Aarkay Security, the contractor. Shri Subhash Yadav was enganged as a security personnel by the contractor on 01.02.2006 and deputed to work at the premises of the principal employer. He served the principal employer till 19.03.2010. His services were allegedly dispensed with by the contractor. He raised a demand for reinstatement of his services, which was not conceded to. Ultimately, an industrial dispute was raised by him before the Conciliation Officer on 21.07.2010. Conciliation proceedings were initiated. After expiry of 45 days from the date of making application before the Conciliation Officer, the claimant filed a claim before this Tribunal under sub-section (2) of Section 2A of Industrial Disputes Act, 1947 (in short the Act). Since his case was not hit by the provisions of Section (3) of Section 2A of the Act, it was registered as an industrial dispute.

2. In his claim statement, the claimant pleads that he served continuously with the contractor from 01.02.2006 to 19.03.2010. His last drawn wage were Rs. 6100.00. His services were regularized on 21.01.2009. Legal facilities, such as appointment letter, attendance card, pay slips, leaves, bous, overtime wages etc. were not made available to him. He raised a demand in that regard, which annoyed his employer, the contractor. His services were dispensed with on 19.03.2010 in an illegal manner. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

3. The contractor resists the claim pleading that the appropriate Government is the State Government and not the Central Government. It is pleaded that the clam is to be discarded. It has been projected that the claimant joined services with the contractor on 21.01.09. His claim that he is a service since 01.02.2006 is false. It has been denied that legal facilities such as referred in the claim statement were not made available to him. His services were never terminated on 19.03.2010, as alleged by him. The claimant absented himself from attending to his duties and as such letters dated 24.04.2010 and 06.05.2010 were sent calling upon him to join his duties. He had not responded to the communications, so set. Since the claimant had himself abandoned the job, he is not entitled to relief of reinstatement in service with continuity and full back wages.

4. The principal employer resisted the claim pleading that there existed no relationship of employer and employee between the claimant and the hotel. Contract was awarded to M/s Aarkay Security for providing security services from 21.01.2010 to 20.01.2011, *vide* letter dated 19.01.2009. It was further extended from 21.01.2011 to 20.01.2012, *vide* letter dated 07.01.2011 on same terms and conditions. Claimant was engaged by the contractor and the hotel had not exercised any control over him. The claimant does not seek any relief against the hotel. Hence his claim is liable to be dismissed.

5. On pleadings of the parties, following issues were settled:

(i) Whether the services of the claimant were terminated by management No. 2 on 19.03.2010, as claimed?

(ii) Whether the alleged termination of service of the claimant amounts to retrenchment?

(iii) Whether the termination of services of the claimant is in violation of provisions 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947? If yes, its effect.

(iv) Whether the claimant had abandoned his services as claimed by management No. 2?

(v) Relief.

6. In order to establish his claim, the claimant entered the witness box to testify facts. Shri G.K. Sethi, Deputy Manager, deposed facts on behalf of the principal employer Col. Ravinder Kumar narrated facts on behalf of the contractor.

7. Arguments were heard. Shri Hemant Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri V.P. Gaur, authorised representative, presented facts on behalf of the hotel. Shri A.K. Ahuja, authorized representative, raised his submissions on behalf of the contractor. During the course of arguments, parties were persuaded to settle their dispute amicably. Good sense prevailed and the dispute was settled between the parties amicably. In view of these facts that the parties had settled their dispute amicably, there remains no occasion to adjudicate the issues referred above.

8. Claimant made a statement to the effect that he was willing to accept Rs. 20,000.00 from the contractor towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. He announced that on payment of Rs. 20,000.00 to him, his claim would stand satisfied. Shri A.K. Ahuja, authorised representative of the contractor, unfolded that he was competent to settle the case on behalf of the contractor with the claimant. He undertook, on behalf of the contractor, to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim, made in the present dispute. Thus, it emerged that the contractor agreed to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. On payment of a sum of Rs. 20,000 claim made would stand satisfied. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated : 11 September, 2012

ANNEXURE-IV

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 167/2011

Shri Ramphal Singh,
Through Rasthtriya Mazdoor Sangh,
B-40, Bulwared Road, Tis Hazari,
Delhi-110054. ...workman

Versus

1. The Manager,
M/s Centaur Hotel,
IGI Airport, New Delhi

2. The Manager,
Aarkay Security
S.T.C. Building,
Janpath Road,
New Delhi-110001 ...Management

AWARD

Watch and ward staff was outsourced by Centaur Hotel, the principal employer, through M/s Aarkay Security, the contractor. Shri Ramphal Singh was engaged as a security personnel by the contractor on 01.02.2006 and deputed to work at the premises of the principal employer. He served the principal employer till 19.03.2010. His services were allegedly dispensed with by the contractor. He raised a demand for reinstatement of his services, which was not conceded to. Ultimately, an industrial dispute was raised by him before the Conciliation Officer on 21.07.2010. Conciliation proceedings were initiated. After expiry of 45 days from the date of making application before the Conciliation Officer, the claimant filed a claim before this Tribunal under sub section (2) of Section 2A of Industrial Disputes Act, 1947 (in short the Act). Since his case was not hit by the provisions of Section (3) of Section 2A of the Act, it was registered as an industrial dispute.

2. In his claim statement, the claimant pleads that he served continuously with the contractor from 01.02.2006 to 19.03.2010. His last drawn wages were Rs. 6100.00. His services were regularized on 21.01.2009. Legal facilities, such as appointment letter, attendance card, pay slips, leaves, bonus, overtime wages etc. were not made available to him. He raised a demand in that regard, which annoyed his employer, the contractor. His services were dispensed with on 19.03.2010 in an illegal manner. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

3. The contractor resists the claim pleading that the appropriate Government is the State Government and not the Central Government. It is pleaded that the claim is to be discarded. It has been projected that the claimant joined services with the contractor on 21.01.09. His claim that he is in service since 01.02.2006 is false. It has been denied that legal facilities such as referred in the claim statement were not made available to him. His services were never terminated on 19.03.2010, as alleged by him. The claimant

absented himself from attending to his duties and as such letters dated 24.04.2010 and 06.05.2010 were sent calling upon him to join his duties. He had not responded to the communications, so sent. Since the claimant had himself abandoned the job, he is not entitled to relief of reinstatement in service with continuity and full back wages.

4. The principal employer resisted the claim pleading that there existed no relationship of employer and employee between the claimant and the hotel. Contract was awarded to M/s Aarkay Security for providing security services from 21.01.2010 to 20.01.2011, *vide* letter dated 19.01.2009. It was further extended from 21.01.2011 to 20.01.2012, *vide* letter dated 07.01.2011 on same terms and conditions. Claimant was engaged by the contractor and the hotel had not exercised any control over him. The claimant does not seek any relief against the hotel. Hence his claim is liable to be dismissed.

5. On pleadings of the parties, following issues were settled:

(i) Whether the services of the claimant were terminated by the management No. 2 on 19.03.2010, as claimed?

(ii) Whether the alleged termination of service of the claimant amounts to retrenchment?

(iii) Whether the termination of services of the claimant is in violation of provisions 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947? If yes, its effect.

(iv) Whether the claimant had abandoned his services as claimed by management No. 2?

(v) Relief.

6. In order to establish his claim, the claimant entered the witness box to testify facts. Shri G.K. Sethi, Deputy Manager, deposed facts on behalf of the principal employer Col. Ravinder Kumar narrated facts on behalf of the contractor.

7. Arguments were heard. Shri Hemant Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri V.P. Gaur, authorised representative, presented facts on behalf of the hotel. Shri A.K. Ahuja, authorized representative, raised his submissions on behalf of the contractor. During the course of arguments, parties were persuaded to settle their dispute amicably. Good sense prevailed and the dispute was settled between the parties amicably. In view of these facts that the parties had settled their dispute amicably, there remains no occasion to adjudicate the issues referred above.

8. Claimant made a statement to the effect that he was willing to accept Rs. 22,000.00 from the contractor towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. He announced that on payment of Rs. 22,000.00 to him, his claim would stand satisfied. Shri A.K. Ahuja, authorised representative of the contractor, unfolded that he was competent to settle the case on behalf of the contractor with the claimant. He undertook, on behalf of the contractor, to pay a sum of Rs. 22,000.00 to the claimant towards full and final settlement of his claim, made in the present dispute. Thus, it emerged that the contractor agreed to pay a sum of Rs. 22,000.00 to the claimant towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. On payment of a sum of Rs. 22,000 claim made would stand satisfied. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated : 11th September, 2012

ANNEXURE-V

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 168/2011

Shri Jagat Narain,
Through Rasthtriya Mazdoor Sangh,
B-40, Bulwared Road, Tis Hazari,
Delhi-110054. ...workman

Versus

1. The Manager,
M/s Centaur Hotel,
IGI Airport, New Delhi.
2. The Manager,
Aarkay Security
S.T.C. Building,
Janpath Road,
New Delhi-110001. ...Management

AWARD

Watch and ward staff was outsourced by Centaur Hotel, the principal employer, through M/s Aarkay Security, the contractor. Shri Jagat Narain was engaged as a security personnel by the contractor on 01.02.2006 and deputed to work at the premises of the principal employer. He served the principal employer till 19.03.2010. His services were allegedly dispensed with by the contractor. He raised a demand for reinstatement of his services, which was not conceded to. Ultimately, an industrial dispute was raised by him before the Conciliation Officer on 21.07.2010. Conciliation proceedings were initiated. After expiry of 45 days from the date of making application before the

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Conciliation Officer, the claimant filed a claim before this Tribunal under sub-section (2) of Section 2A of Industrial Disputes Act, 1947 (in short the Act). Since his case was not hit by the provisions of Section (3) of Section 2A of the Act, it was registered as an industrial dispute.

2. In his claim statement, the claimant pleads that he served continuously with the contractor from 01.02.2006 to 19.03.2010. His last drawn wags were Rs. 6100.00. His services were regularized on 21.01.2009. Legal facilities, such as appoitment letter, attendance card, pay slips, leaves, bonus, overtime wages etc. were not made available to him. He raised a demand in that regard, which annoyed his employer, the contractor. His services were dispensed with on 19.03.2010 in an illegal manner. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

3. The contractor resists the claim pleading that the appropriate Government is the State Government and not the Central Government. It is pleaded that the claim is to be discarded. It has been projected that the claimant joined services with the contractor on 21.01.09. His claim that he is in service since 01.02.2006 is false. It has been denied that legal facilities such as referred in the claim statement were not made available to him. His services were never terminated on 19.03.2010, as alleged by him. The claimant absented himself from attending to his duties and as such letters dated 24.04.2010 and 06.05.2010 were sent calling upon him to join his duties. He had not responded to the communications, so sent. Since the claimant had himself abandoned the job, he is not entitled to relief of reinstatement in service with continuity and full back wages.

4. The principal employer resisted the claim pleading that there existed no relationship of employer and employee between the claimant and the hotel. Contract was awarded to M/s Aarkay Security for providing security services from 21.01.2010 to 20.01.2011, *vide* letter dated 19.01.2009. It was further extended from 21.01.2011 to 20.01.2012, *vide* letter dated 07.01.2011 on same terms and conditions. Claimant was engaged by the contractor and the hotel had not exercised any control over him. The claimant does not seek any relief against the hotel. Hence his claim is liable to be dismissed.

5. On pleadings of the parties, following issues were settled:

(i) Whether the services of the claimant were termnated by the management No. 2 on 19.03.2010, as claimed?

(ii) Whether the alleged termination of service of the claimant amounts to retrenchment?

(iii) Whether the termination of services of the claimant is in violation of provisions 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947? If yes, its effect.

(iv) Whether the claimant had abandoned his services as claimed by management No. 2?

(v) Relief.

6. In order to establish his claim, the claimant entered the witness box to testify facts. Shri G.K. Sethi, Deputy Manager, deposed facts on behalf of the principal employer Col. Ravinder Kumar narrated facts on behalf of the contractor.

7. Arguments were heard. Shri Hemant Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri V.P. Gaur, authorised representative, presented facts on behalf of the hotel. Shri A.K. Ahuja, authorized representative, raised his submissions on behalf of the contractor. During the course of arguments, parties were persuaded to settle their dispute amicably. Good sense prevailed and the dispute was settled between the parties amicably. In view of these facts that the parties had settled their dispute amicably, there remains no occasion to adjudicate the issues referred above.

8. Claimant made a statement to the effect that he was willing to accept Rs. 20,000.00 from the contractor towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. He announced that on payment of Rs. 20,000.00 to him, his claim would stand satisfied. Shri A.K. Ahuja, authorised representative of the contractor, unfolded that he was competent to settle the case on behalf of the contractor with the claimant. He undertook, on behalf of the contractor, to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim, made in the present dispute. Thus, it emerged that the contractor agreed to pay a sum of Rs. 20,000.00 to the claimant towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. On payment of a sum of Rs. 20,000 claim made would stand satisfied. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated : 11th September, 2012

नई दिल्ली, 10 अक्तूबर, 2012

का.आ.3363.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गंवमेन्ट ओपीयम एण्ड अलकाइड फैक्ट्री, नीमच के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट सदंर्भ संख्या सं. जीआई.टी./एलसी/आर/62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 108, 136, 138, 139,140/ 2003 और 71,72,73/2004 को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/10/2012 को प्राप्त हुआ था।

[सं. एल-42012/09/2000-आईआर (डीयू),
सं. एल-42012/271, 274, 278, 275, 282/1999-आईआर (डीयू),
सं. एल-42012/11/2000-आईआर (डीयू),
सं. एल-42012/281, 279/1999-आईआर (डीयू),
सं. एल-42012/12/2000-आईआर (डीयू),
सं. एल-42012/269, 273/1999-आईआर (डीयू),
सं. एल-42012/26/2000-आईआर (डीयू),
सं. एल-42012/260/1999-आईआर (डीयू),
सं. एल-42012/23/2000-आईआर (डीयू),
सं. एल-42012/270/1999-आईआर (डीयू),
सं. एल-42012/16,15, 27, 06, 24, 13/2000-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 10th October, 2012

S.O. 3363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 108, 136, 138, 139, 140/2003 and 71, 72, 73/2004) of the Central Government Industrial Tribunal cum Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Govt. Opium & Alkaloid Factory, Neemuch and their workman, which was received by the Central Government on 03.10.2012.

[No. L-42012/09/2000-IR(DU),
No. L-42012/271, 274, 278, 275, 282/1999-IR(DU),
No. L-42012/11/2000-IR(DU)],
No. L-42012/281, 279/1999-IR(DU)],
No. L-42012/12/2000-IR(DU)],
No. L-42012/269, 273/1999-IR(DU)],
No. L-42012/26/2000-IR(DU)],
No. L-42012/260/1999-IR(DU)],
No. L-42012/23/2000-IR(DU)],
No. L-42012/270/1999-IR(DU)],
No. L-42012/16, 15, 27, 06, 24, 13/2000-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

PREISIDING OFFICER: SHRI MOHD. SHAKIR HASAN

CASE NO. CGIT/LC/R/62/2003

Shri Chand Khan,
S/o Shri Miya Khan,
Kumhara Gali Ke peeche,
Gwaltoli, Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/63/2003

Shri Madhykar Rao,
S/o Shri Yashwantraoji,
Naya Bazar, Khari Kuan,
Neemuch (MP)-2 ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/64/2003

Shri Brijmohan,
S/o Shri Kishanlal,
Moolchand Marg,
Near New Kalali,
Neemuch ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/65/2003

Shri Devaki Nandan,
S/o Shri Shankarlalji,
Village Dhaneria Kalan,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/66/2003

Shri Ashan Mohd.,
S/o Shri Khan Mohd.
Kumhara Gali,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/67/2003

Shri Shyamlal,
S/o Shri Pyarelalji,
Village Jaisinghpura,
Neemuch ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/68/2003

Shri Nandkishore
S/o Shri Mohandasji Bairagi,
Jaisinghpura,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/70/2003

Shri Prahlad Prakash,
S/o Shri Nandlalji,
Jaisinghpura,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/71/2003

Shri Khemraj Sharma
S/o Shri Bhanwalalji,
Naya Bazar, Khari Kuan,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/72/2003

Shri Kishorilal,
S/o Shri Madanlal Ganchha,
Naya Bazar Khari Kuan,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/73/2003

Shri Mohd. Rafiq,
S/o Shri Abdul Kadar,
Juna Baghana,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/74/2003

Shri Gopal Prajapati
S/o. Shri Rupchandraji,
Bhoparam Compound,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/75/2003

Shri Abdul Hameed,
S/o Shri Abdul Aziz,
Near Police Station,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/76/2003

Shri Shankarlal S/o Bagdiram,
Naya Bazar Gandha Mohalla,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/108/2003

Shri Radheshyam,
S/o Shri Bhuralalji,
R/o Jaisinghpura,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/136/2003

Shri Premprakash
S/o Shri Ratanlalji,
Bunglow No. 46-A, CRP Road,
Neemuch (MP) ...(Workman)

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/138/2003

Shri Gorishankar,
S/o Shri Gangaram,
Jaisinghpura,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/139/2003

Shri Moin Uddin,
S/o, Shri Surajuddin,
R/o Old Dhobi Mohalla,
Neemuch (MP) ...Workman
Versus
The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/140/2003

Shri Satnarayan,
S/o Shri Badrilal Mali,
Juna Baghana,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/71/2004

Shri Suresh Chandra,
S/o Shri Lakshminarayan,
Bholaram Compound,
Neemuch (MP) ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/72/2004

Shri Gordhanlal,
S/o Shri Chunnilal,
R/o Gram Nandwel,
Tehsil and Distt. Mandsaur ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

CASE NO. CGIT/LC/R/73/2004

Shri Arif Khan,
S/o Shri Yusuf Khan,
Tada Mohalla,
Neemuch ...Workman

Versus

The General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch (MP) ...Management

AWARD

Passed on this 19th day of September, 2012

1. (a) The Government of India, Ministry of Labour *vide* its Notification No. L-42012/(9)/2000 IR(DU) dated 6-5-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Chand Khan S/o Shri Miya Khan w.e.f. 30.6.91 is justified? If not, to what relief the workman is entitled to?"

(b) The Government of India, Ministry of Labour *vide* its Notification No. L-42012(271)/99 IR(DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Madhukar Rao, S/o Shri Yashwantraoji w.e.f 14.12.90 is justified? If not, to what relief the workman is entitled to?"

(c) the Government of India Ministry of Labour *vide* its Notification No. L-42012 (274)99 IR (DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Brijmohan S/o Shri Kishanlal w.e.f 4.7.92 is justified? If Not, to what relief the workman is entitled to?"

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(d) The Government of India, Ministry of Labour *vide* its Notification No. L-42012(278)/99 IR(DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Devaki Nandan, S/o Shri Shankarlalji w.e.f. 30.6.91 is justified? If not, to what relief the workman is entitled to?"

(e) The Government of India, Ministry of Labour vide its Notification No. L-42012(275)/99 IR(DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Ahsan Mohd. S/o Shri Khan Mohd. w.e.f. 18.7.92 is justified? If not, to what relief the workman is entitled to?"

(f) The Government of India, Ministry of Labour vide its Notification No. L-42012(282)/99 IR(DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Shyamlal S/o Shri Pyarelalji w.e.f. 30.6.91 is justified? If not, to what relief the workman is entitled to?"

(g) The Government of India, Ministry of Labour vide its Notification No. L-42012(11)/2000 IR (DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Nandkishore S/o Shri Mohandasji Bairagi w.e.f. 30.6.91 is justified? If not, to what relief the workman is entitled to?"

(h) The Government of India, Ministry of Labour vide its Notification No. L-42012(281)/99 IR (DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Prahlad Prakash S/o Shri Nandlalji w.e.f. 24.6.91 is justified? If not, to what relief the workman is entitled to?"

(i) The Government of India, Ministry of Labour vide its Notification No. L-42012(279)/99 IR (DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Khemraj Sharma, S/o Shri Bhanwalalji w.e.f. 18.7.92 is justified? If not, to what relief the workman is entitled to?"

(j) The Government of India, Ministry of Labour vide its Notification No. L-42012(12)/2000 IR (DU) dated 6.5.2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Kishorilal, S/o Madanlal Ganchha w.e.f. 30.6.91 is justified? If not, to what relief the workman is entitled to?"

(k) The Government of India, Ministry of Labour vide its Notification No. L-42012/269/99/IR(DU) dated 6-5-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Mohd. Rafiq, S/o Shri Abdul Kadar w.e.f. 30-6-91 is justified? If not, to what relief workman is entitled to?"

(l) The Government of India, Ministry of Labour vide its Notification No. L-42012(273)/99 IR(DU) dated 6-5-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Gopal Prajapati S/o Shri Rupchandraji w.e.f. 4-7-92 is justified? If not, to what relief the workman is entitled to?"

(m) The Government of India, Ministry of Labour vide its Notification No. L-42012(26) 2000 IR(DU) dated 6-5-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Abdul Hameed S/o Shri Abdul Aziz w.e.f. 6-2-93 is justified? If not, to what relief the workman is entitled to?"

(n) The Government of India, Ministry of Labour vide its Notification No. L-42012/260/99/IR(DU) dated 6-5-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Shankar Lal S/o Shri Bagdiram w.e.f. 30-6-91 is justified? If not, to what relief workman is entitled to?"

(o) The Government of India, Ministry of Labour vide its Notification No. L-42012 (23)/2000 IR(DU) dated 6-6-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Radheshyam S/o Shri Bhurulalji w.e.f. 30-6-91 is justified? If not, to what relief the workman is entitled to?"

(p) The Government of India, Ministry of Labour vide its Notification No. L-42012 (270)/99 IR(DU) dated 6-8-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Premprakash S/o Shri Ratanlalji w.e.f. 30-6-88 is justified? If not, to what relief the workman is entitled to?"

(q) The Government of India, Ministry of Labour vide its Notification No. L-42012(16)/2000/IR(DU) dated 6-8-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Gorishankar S/o Shri Gangaram w.e.f. 21-7-92 is justified? If not, to what relief the workman is entitled to?"

(r) The Government of India, Ministry of Labour vide its Notification No. L-42012(15)/2000 IR(DU) dated 6-8-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Moin Uddin S/o Shri Sirajuddin Qureshi w.e.f. 18-7-92 is justified? If not, to what relief the workman is entitled to?"

(s) The Government of India, Ministry of Labour vide its Notification No. L-42012(27)/2000 IR(DU) dated 15-9-2003 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Satyanarayan S/o Shri Badrilal Mali w.e.f. 14-12-90 is justified? If not, to what relief the workman is entitled to?"

(t) The Government of India, Ministry of Labour vide its Notification No. L-42012(6)/2000 IR(DU) dated 21-6-2004 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Suresh Chandra S/o Shri Laxminarayan w.e.f. 8-6-91 is justified? If not, to what relief the workman is entitled to?"

(u) The Government of India, Ministry of Labour vide its Notification No. L-42012(24)/2000 IR(DU) dated 21-6-2004 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Gordhanlal S/o Shri Chunnilal is justified? If not, to what relief the workman is entitled to?"

(v) The Government of India, Ministry of Labour vide its Notification No. L-42012(13) 2000 IR(DU) dated 21-6-2004 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Arif Khan S/o Shri Yusuf Khan w.e.f. 30-6-91 is justified? If not, to what relief the workman is entitled to?"

2. All the 22 reference cases are taken up together in the ends of justice as all are interconnected with each other which are on a common subjects matter and on common issues.

3. The case of all the 22 workman, is short, is that they are employed separately as casual labour with the management in between the period of 1973 to 1986 on a monthly pay with DA. They has worked continuously and were terminated separately in between the period of 1988 to 1992. They were supplied work almost daily with artificial break of a day or two. They had worked more than 240 days in each calendar year. They had been terminated without complying the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act 1947) as no notice was given nor any retrenchment compensation was paid before termination.

4. The further case of the workmen is that there were permanent/semi-permanent posts available in the establishment of the management but these workmen were not deliberately classified as such though several request were made to the management through their Trade Union as well. It is stated that several other casual workers though age barred and juniors to these workmen were made temporary unskilled workers in the pay scale of Rs. 196-232. This arbitrary action of the managemnt was continued in future also. It is stated that the management had employed more than hundred employees at the time of termination of these workmen and violated the provision of Section 25N of the Act, 1947. The principle of last come first go was not followed. The action of the management was also of unfair labour practice and victimization. These

workmen are unemployed from the date of termination. It is submitted that these workmen be reinstated with full back wages and all other benefits.

5. The management appeared in all the 22 reference cases and filed the same Written Statement in all the cases. The case of the management, interalia, is that Opium and Alkaloid work is involved in the production of Opium and from time to time, on account of volume of work, the management is required to engage the services of casual labour for short and specified period. The casual labours are never engaged indefinitely and their services has been obtained upon the necessity and availability of work. The services of the workmen commenced in the morning of the day they report and it comes to an end at the end of the working day. These workmen were engaged in the same terms and conditions. The workmen were never issued appointment letters and their services were purely on casual basis. The appointment of Class IV employees is required to be done in accordance with statutory recruitment rules. It is submitted that the references be decided in favour of the management.

6. On the basis of the pleadings of the parties, the following issues are framed for adjudication-

I. Whether the action of the management in terminating the services of the workmen is justified?

II. Whether the workmen instead of termination were entitled to be made as temporary employees?

III. To what relief the workmen are entitled?

7. **Issue Nos. I & II**

Both the issues are taken up together for the sake of convenience. To prove the case, the workmen have given their oral and documentary evidence. In R/62/03, the workman Shri Chand Khan is examined himself. He has supported his case. The management has not cross-examined this withness in spite of given full opportunity and he has been discharged on 10-8-09. His evidence shows that he was engaged on 3-5-1978 and worked continuously till 30-6-91 when he was terminated. He has stated that he had not been given any notice nor any retrenchment compensation before termination. He has further stated at para 3 that juniors to him were made temporary workers vide order dated 15-2-1984.

8. In R/63/03, the workman Madhukar Rao is also examined himself and is discharged without cross-examination on 22-7-2009 as the management has been given opportunity to cross-examine but has not cross-examined him. He has also supported his case that he was engaged in 1977 and worked continuously till 1992. He has stated that one day casual holiday was given in a month and the amount of provident fund was detected from his pay. His evidence also shows that he was continuously engaged on monthly payment. He has stated that Jabbar Khan, Deepchand and others after giving them age relaxation were appointed as temporary workers but they had not been considered for temporary/ permanent workers. His evidence further shows that Amritlal, Abdul Hamid and Madan were made permanent workers who were juniors to him. He has filed the documents in support of his contention.

9. In R/64/03, the workman Shri Birij Mohan is also examined himself. He has also supported his case. He has stated that he was engaged from 1976 to 1992. He was engaged more than 240 days in a calendar year. He has corroborated the evidence of other workmen. He has proved few employment cards which are marked as Exhibit W/1 series and has also proved few certificates which are Exhibit W/2 series. These documents are filed to show that he was engaged on monthly basis on pay and DA as casual worker. He has supported his case in cross-examination. He has stated that he worked for drying and packing opium and other works too. His evidence shows that he was continuously engaged till his termination.

10. In R/65/03, Deokinandan is also examined himself in the case. He has corroborated the evidence of other witnesses. The management has declined to cross-examine him. He has stated that he was engaged on 18-4-81 and was terminated on 30-6-91 without notice and without payment of retrenchment compensation.

11. In R/66/03, Ahsan Mohammad is also examined himself. This witnesss has also corroborated the evidence of other witnesses. He was engaged on 19-10-79 and worked more than 240 days in a calendar year till termination on 18-7-1972 without notice and without payment of compensation.

12. In R/67/03, the workman Shri Shyamlal is examined. He has supported his case and has also corroborated the evidence of other workmen. He was engaged on 1986 and was terminated in 1992 as casual labour. He worked more than 240 days in a calendar year. He has proved his few employment cards which are marked as W/1 series. He has proved his employment exchange registration card which is marked as Exhibit W/2. He has stated in cross-examination that he received payment of the days he worked. There is nothing to show that he had not worked 240 days in a calendar year nor the management has challenged that he had not worked 240 days in a calender year.

13. In R/68/03, the workman Shri Nand Kishore is examined in his case. He has supported his case in his evidence and has corroborated the evidence of other workmen. He has stated that he was engaged on 22-5-83 and worked more than 240 days in a calendar year till termination on 30-6-91 without notice and without payment of retrenchment compensation. He has supported that the juniors were made temporary worker vide order dated

15-2-84. In cross-examination he has again supported his case. He has stated that he used to do the work of opium as well as other workers. He has been suggested that he had not worked 240 days in a calendar year. The suggestion is no evidence unless it is proved otherwise.

14. In R/70/03, the workman Shri Parladh Parkash is also examined himself. He has supported his case and also corroborated the evidence of other workmen. He has stated that he was engaged in 1986 and worked more than 240 days in each calendar year till termination in the year 1991 without notice and without payment of retrenchment compensation. He has also proved his employment cards which are marked as Exhibit W/1 to W/1(b). He has also proved his employment Exchange registration card which is marked as Exhibit W/2. He has been cross-examined by the management. He has stated that he worked regularly. He was simply suggested that he had not worked 240 days in a calendar year. His evidence supports his case.

15. In R/71/03, the workman Shri Khemraj Sharma is examined in his case. He has also supported his case and has also corroborated the evidence of other workmen. The management had failed to cross-examine him in spite opportunity was given to the management as such the workman was discharged. His evidence is unrebutted. He has stated that he was working in the establishment of the management from 1986 and continuously worked till 1992. He has not been given any notice before termination. He has further stated that the management had kept in the employment to the junior workers in violation of the Act, 1947. He has stated that circular was issued for regularizing and giving other benefit to the workers but they had not been given such benefits.

16. In R/72/03, the workman Shri Kishorilal is examined. He has also supported his case in his evidence. The management has failed to cross-examine him in spite of opportunity given to him. His evidence is unrebutted. He has also stated that he worked from 31-10-76 to 30-6-91. His evidence has also corroborated the case of other workmen.

17. In R/73/03, the workman Shri Md. Rafique is also examined. He has supported his case. He has stated that he was engaged on 19-10-79 and worked 240 days in every calendar year till termination on 30-6-91 without notice and without any retrenchment compensation. He has also corroborated the evidence of other workmen that the juniors to them were made temporary workers vide order dated 15-2-1984. He has also proved his Employment Cards which are marked as Exhibit-1 series. He has also proved certificate given for his works which are also marked as Exhibit-2 series. He was registered in Employment Exchange and filed his employment Exchange Card which is marked as Exhibit-3. He has been cross-examined by the management but he has supported his case in cross-examination. He has stated that he was employed through Employment Exchange.

18. In R/74/03, the workman Gopal Prajapati did not turnup for cross-examination as such his evidence was closed on 14-1-2011 on the submission of his lawyer. This shows that his evidence filed in the case is of no value and it doesnot support his case.

19. In R/75/03, the workman Shri Abdul Hamid is examined in the case. He has supported his case in his evidence and has corroborated the evidence of other workmen. He has also stated that he was engaged in 1980 and worked continuously till 1992. He had worked more than 240 days in each calendar year. He has also supported this fact that the junior casual workers were remained in service than these workmen. He has also proved his certificates and employment card which are proved as Exhibit W/1 series and W/2 respectively. He has been cross-examined by the management but the management has failed to get anything in cross-examination, he has further corroborated his case.

20. In R/76/03, the workman Shankerlal is himself examined in his case. He has supported his case. He has also stated that he was engaged on 24-5-83 and worked 240 days in every calendar year till termination on 30-6-91 without notice. He was not paid any retrenchment compensation. In cross-examination he stated that he did all works of labour and the days of work can be determined from the record. There is nothing in his evidence to disbelieve this witness. The management has also not denied that he was not engaged. His evidence supports his case.

21. In R/108/03, the workman Shri Radhe Shyam is also examined himself in the case. He has also supported his case and also the evidence of other workmen. He has stated that he was engaged on 24-5-83 and worked 240 days in every calendar year till termination on 30-6-91 without notice. He has been cross-examined. He has admitted that he was engaged as casual labour. His evidence shows that he was not engaged as seasonal worker. Moreover there is no case of either of the parties that these workmen were seasonal workers rather the case of both the parties is that they were engaged as casual labours. There is nothing in his evidence to disbelieve this workman.

22. In R/136/03, the workman Shri Prem Parkash is examined in his case. He has stated that he was engaged as casual worker in 1985 and thereafter worked continuously till termination in the year 1988 without notice and without payment of retrenchment compensation. He worked 240 days in each calendar year. He has also supported this fact that the junior workers were made temporary workers. There is no cross-examination to this witness by the management. Though opportunity was given. Lastly the witness was discharged on 29-9-09. His evidence is unrebutted which is completely in support of the case.

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23. In R/138/03, Shri Gauri Shanker is the workman who has deposed in the case. He has also supported his case in his evidence. He was engaged as casual labour in 1983 and worked regularly till 1992. He has also proved his employment cards and certificates which are marked as Exhibit 2 series and Exhibit W/3 respectively. There is nothing in his cross-examination to disbelieve this witness.

24. In R/139/03, the workman Moinuddin has deposed in support of his case. He has stated that he worked from 1979 as casual labour continuously till 1992. He worked more than 240 days in each calendar year. He was terminated without notice and without payment of compensation. He is unemployed since 1992. He was paid on monthly basis with DA. He has stated that Suresh Madho was junior to him and he was made temporary worker. He has further stated that the worker Jabbar Khan was made temporary worker after giving relaxation of his age but this workman was in employment but his case was not considered. The management has not cross-examined inspite of ample opportunity given to him. As such the workman was discharged and his evidence is unrebutted. His evidence completely supports the cases of all the workmen.

25. In R/140/03, the workman Shri Satnarayan Mali has deposed and supported the case. He has stated that he was engaged as casual labour in the year 1969 and worked till 1991. He worked 240 days in every calendar year. He has also given the names of the workers who were made temporary workers by the management. He has also proved his identity card, certificates and employment cards which are marked as Exhibit W/1, W/2 series and W/3 series respectively. He has stated in cross-examination that he was engaged as casual labour when there was need of casual labour. There is nothing to disbelieve his evidence that he did not work 240 days in every calendar year.

26. In R/71/04, the workman Suresh Chand has filed his evidence in the case by affidavit but he did not turnup for cross-examination. As such there is no oral evidence on his behalf.

27. In R/72/04, the workman Gowardhan Lal has supported his case in his evidence. The management has failed to cross-examine this witness though opportunity was given to him. As such the witness was discharged on 22-2-2010. He has stated in his evidence that he was engaged as casual labour in the year 1979 and worked continuously till 1992 when he was terminated without notice and without payment of any compensation. He has also supported the evidence of other workmen. He has also supported this fact that the juniors were made temporary workers. His evidence is unrebutted.

28. In R/73/04, the workman Arif Khan did not turn up for cross-examination as such his evidence was closed on 21-4-2010. Considering the entire oral evidence, it appears that except Shri Gopal Prajapati, Shri Suresh Chand and Shri Arif Khan, others have supported their case that they were working as casual labour continuously till termination and had worked 240 days in every calendar year. They have also supported the fact that the junior workers were made temporary workers and their cases were not considered by the management arbitarily.

29. Now let us examine the documentary evidence filed by the workmen in their cases. The workmen have filed employment cards and certificates to show that they were casual labours and were not seasonal workers. Those documents are accordingly marked. These documents are also filed to show that they were on monthly pay and DA and their services were not commenced in the morning of the day they report and came to an end at the end of the working day as has been alleged by the management in his pleading. But those documents clearly shows that they were employed intermittently and were not regularly employed. It is also clear from the employment cards and certificates that they were not employed 240 days in a calendar year and specially for a period of one year during the period of twelve calendar months preceding the date with reference or termination as has been required under Section 25-B of the Act, 1947. Since their services are not termed to be a continuous service for a period of one year, the provision of Section 25-F of the Act, 1947 is not applicable. This shows that the documents do not corroborate the oral evidence of the workmen on the point of continuous service of one year to attract the provision of Section 25-F of the Act, 1947.

30. Another question raised by the workmen is that similarly situated other junior casual labours were made temporary workers and these workmen were denied and were not considered. In support of the case, the workmen have filed documentary evidence. The workman have filed the permanent standing orders of Govt. Opium and Alkaloid Factory, Neemuch. The said Standing order is admitted by the management which is marked in R/138/03 as Exhibit W/1. There is classification of workers as Permanent, Temporary and Casual Worker. The said standing order has provided the provision as to how the casual worker is to be made as temporary worker. The clause 2 sub-class III of the standing order runs as follows—

एक अकास्मिक कर्मकार वह कर्मकार है जिस की नियोजन की प्रकृति विशुद्ध अकास्मिक है किन्तु जब कभी अस्थायी वर्ग में रिक्त होती तो तब एक जैसी कुशलता वाले कर्मकारों में से वरिष्ठतम कर्मकारों को उस पद पर नियुक्त किया जायेगा।

This shows that on the basis of seniority with other conditions temporary worker be made from casual worker. The workmen have supported in their evidence that the juniors to them, to whom they had taken names, were made temporary workers ignoring their right claim. There

is no evidence on the record that till termination of these workmen, the management had prepared any seniority list and at the time the alleged casual labours were made temporary workers, their names were also considered. This clearly shows that there is a violation of the standing order that without preparing any seniority list, the management had made temporary worker in violation of the Standing Orders. Rule 77 of the Industrial Dispute (Central) Rules 1977 also runs as follows—

"Rule-77—Maintenance of seniority list of workmen—The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice-board in a conspicuous place in the premises of the industrial establishment atleast seven days before the actual date of retrenchment."

Thus it is clear that the management was duty bound to prepare a seniority list and there is nothing to show that seniority list was prepared by the management before appointing temporary worker from casual worker and before termination to these workmen.

31. To support the contention, the workmen have filed certain documents. The office order dated 15.2.84 is filed in the cases. The management has not denied. The office order shows that Shri Jabbar Khan and 20 other were appointed as temporary unskilled workers in the year 1984. This appears to be in violation of the standing orders. The said order dated 15.2.84 does not show that they were appointed as temporary unskilled worker on the basis of seniority list. The workmen has filed the appointment letter of Jabbar Khan which is Paper No. 13/12 in R/139/03. This appointment letter clearly shows that Jabbar Khan was working as casual labour who was appointed as temporary unskilled worker vide office order dated 15.2.84. This fact clearly shows that casual labour was made temporary unskilled workers but there is nothing to show that any seniority list was prepared before appointing him as temporary unskilled worker. He was appointed alongwith 20 others. This aspect shows that there was arbitrary action of the management. The workmen have filled a seniority list of 1.1.2002 which are paper nos 13/8 to 13/11 in the same case but the said seniority list does not include the names of these workers. These all documents are not denied by the management and are deemed to be admitted. The said seniority list shows that most of the workers of the list were appointed after these workmen and they were appointed as temporary unskilled labours. The workmen has filed a list of 32 workers appointed as unskilled worker by the management which is Paper No. 13/26 in the said case but there is nothing to show that they had been appointed after preparing a seniority list which was the requirement of the standing orders. The workmen has filed a letter dated 30.3.93 of the management whereby the management asked from the Secretary of the Union to furnish the list of ex-casual workers with documents which is Paper No. 27 and the Secretary of the Union furnished a list of 35 ex-casual workers including these workmen with documents to the management which are paper nos 28 & 29 of the said above case. These documents are also not denied by the management. There is nothing to show that the management had considered these workmen. Thus it is clear from the documentary evidence that there was violation of standing orders in appointing temporary unskilled worker and the management had arbitrarily not considered these workmen though they appear to be senior to those who had been appointed as temporary unskilled workers.

32. On the other hand, the management has examined one witness. No documentary evidence is adduced by the management in the case. Now let us examine the oral evidence of the management. The same evidence of the management witness Shri Jagat Narayan Shukla is filed in all the 20 cases but the evidence is not filed in R/71/04 and 72/04. He was cross-examined in R/74/03, R/75/03, R/76/03, R/108/03 and R/140/03. The management witness has not turned up for cross-examination in R/62/03/ R/65/03, R/66/03 and R/73/04. In rest of the cases the learned counsel for the workmen has adopted the same cross-examination as have been done in other cases.

33. The management witness Shri Jagat Narayan Shukla is working as Asst. Engineer (Electrical) in the office of General manager, Govt. Opium & alkaloid Factory, Neemuch. Initially he has supported the case of the management in examination-in-chief. He has stated that the workmen had never completed 240 days in a calendar year and were not engaged indefinitely. There is no evidence that the junior casual labours were not appointed as temporary unskilled workers in violation with the standing order of Govt. Opium & Alkaloid Factory, Neemuch. There is also no evidence that before appointing the casual labour as temporary unskilled worker, a seniority list was prepared. He has stated at para-8 that he has no knowledge as to how the casual labours were absorbed in the permanent job. This shows that there is no evidence to show that as to how those persons were appointed temporary unskilled labours in the year 1984, 1993 and 2002. This aspect of the case clearly shows that the action of the management was arbitrary and was also unfair-labour practice and for victimization. He has proved the copy of standing order in R/140/03 and R/138/03. The relevancy of the standing order has already been discussed earlier. He has also stated that the casual labours were engaged on muster roll. He had seen the muster roll at the time of preparing his evidence. He has further stated that the muster roll

can determine as to how many days these workmen had worked. The said muster rolls were not produced by the management inspite of direction to produce the same. His evidence on the point of days of work done by the workers are based on muster rolls. Moreover the seniority can be determine from muster roll. As such his oral evidence is not tenable on the said point. Moreover he has stated in the cross-examination that the workmen had not worked 240 days in any calendar year. This fact has been denied by him only on the basis that the workmen have claimed in their pleading that they had worked 240 days in every year. This shows that this evidence is not reliable.

34. To sump the entire evidence it is clear that the oral evidence of the workman has contradicted from the documentary evidence that they had worked 240 days in each year. Rather the documentary evidence shows that none of the workmen had worked 240 days in twelve calendar year preceding the date of termination or reference to attract the provision of Section 25 B of the Act, 1947. However the workmen have established in their evidence that there was provision in the standing order that a seniority list is to be prepared by the management and thereafter casual worker would be appointed as temporary unskilled worker. It is also established that the management had appointed temporary unskilled labour from casual labour without preparing seniority list ignoring the right claim of these workmen. This shows that the action of the management was arbitrary and unjust to terminate them without considering their case. This is amount to unfair labour practice. It appears that they were entitled to be made temporary unskilled workers before the workers who were already made temporary unskilled labours and thereafter made permanent workers. Both the issues are thus decided in favour of the workmen and against the management.

35. Issue No. III

On the basis of the discussion made above, it is clear that the action of the management is not justified in terminating their services instead of appointing them temporary unskilled workers as juniors were appointed temporary unskilled workers. The workmen have pleaded and have adduced evidence that after termination they are unemployed and are not in the gainful employment. This evidence is unrebutted. The management is, therefore, directed to reinstate them with half back wages. Thereafter it is directed to prepare a seniority list in accordance with the standing orders and to consider their case for temporary unskilled labour, within two months from the date of award after giving relaxation to their age and to appoint them incase juniors have been appointed as temporary unskilled workers. In case any of these workmen have attained the age of superannuation, then the management is directed to pay a compensation of Rupees One Lac (Rs. 1,00,000) each to those workmen. Accordingly the reference is answered.

36. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 12 अक्तूबर, 2012

का.आ.3364.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बनारस स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट (संदर्भ संख्या 79/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/10/2012 को प्राप्त हुआ था।

[सं. एल-12012/134/95-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 12th October, 2012

S.O. 3364.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/1996) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 2 Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Banaras State Bank Ltd and their workmen, received by the Central Government on 12/10/2012.

[No. L-12012/134/95-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under section 10(1)(d) of the I.D. Act., 1947.

Reference No. 79 of 1996.

Parties : Employer in relation to the management of Banaras State Bank of Muzaffarpur and their workmen.

Apperances :

On behalf of the workman : Mr. D.K. Jha, Ld. Adv.

On behalf of the management : Mr. K. N. Gupta, Ld. Adv.

State: Bihar Industry: Banking

Dated, Dhanbad 27th August, 2012.

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal vide their Order No. L-12012/134/95-IR(B-I) dt. 9.8.1996.

SCHEDULE

"Whether the termination of services of Shri Lalit Kumar Gupta w.e.f. 10.6.1994 by the management-Banaras State Bank Ltd., Muzaffarpur was justified? If not, to what relief the workman is entitled to?

2. The case of workman Lalit Kumar Gupta is that he had served the Banaras State Bank Ltd. at Muzaffarpur as a Deposit Collector/Agent under Laghu Bachat Yojna by mobilising amount of deposit thereunder from 26.6.1979 to 10.6.1994, on security money of Rs. 2000 on 23.6.1979 as per the terms of agreement. The Bank Management had issued him a letter of introduction/authority with attested photograph for the job. He had put satisfactory service in the Bank by collecting more than 16 lakhs upto 02.05.94 Collecting amount from door to door of the customers, depositing the same in the bank, preparing their Pass Books duly signed by the Branch Manager of the Bank for the customers, and making balance confirmation payment vouchers, loan vouchers, ledger posting, debit and credit scrolls etc. were the duties of a deposit Collector/Agent. The workman accordingly performed the job of a regular clerk for full days upto late night. But the Bank Management orally stopped and terminated him from his service w.e.f. 11.6.1994 without any requisite notice u/s 25 F of the Industrial Dispute Act, 1947 in an illegally manner. The Bank even did not concede to a demand notice of the workman dt. 11.7.1994 finally rejecting his letter dt. 16.8.1994. The failure of the conciliation proceeding before the ALC(C), Patna, resulted in the Reference for adjudication.

3. The alleged workman in rejoinder has pleaded with denials that the duties of workman was of deposit collection and not of convassing. He had to visit regularly small depositors, small traders and others for door to door collection, to deposit it in the Bank, and to perform the entries thereof like a regular clerk of the Bank for whole day under the said Yojna. The deposit collector is a workman as per Law. The scheme is still continuing in the Bank.

4. Whereas the contra pleaded case of the Management concerned with specific denials is that as per the engagement letter dt. 25.6.1989 of the workman duly signed by him firstly expressly stipulates that he would work as Publicity cum Collection Representative of the Bank for promotion of the business in Laghu Bachat Yojana Deposit Scheme at his entitlement of 3% commission on the amount collected by him. The nature of the work of the workman Lalit Kumar Gupta was similar to that of Sales Representative who are not covered by the definition of workman. Likewise the nature of his duties being neither skilled, unskilled Manual, Supervisory, Technical or Clinical does not cover the definition of workman. The incidental duties do not affect the status and designation of the employees of the Bank out of when the Manager, Admn. Officer, Executives and Supervisors also how to do same clerical work incidentially. Due to discripencies in the working of the Commission Agents of Muzaffarpur Branch, transaction in the Scheme was closed as the letter dt. 13.4.1994 of the Regional Manager (Koshi Region). In result, the services of Agents/Representatives automatically ended with the closure of the said scheme. So Sri Gupta engaged on commission basis for promotion of the business of the said scheme is not entitled to raise the Industrial Dispute or any claim.

5. Further (additional) plea of the Bank is that with a view to bring persons of Low Income Group into the Banking fold by collecting their/their children's/wives small savings from their door steps or at the place wherever they would be available, the Banaras State Bank Ltd. had introduced the Laghu Bachat Yojna Deposit Scheme. w.e.f. 25.6.1979. So there was no employer-employee Relationship between the Bank and Sri Gupta. He was bound by rules and regulations of his undertaking as per the letter of his engagement dt. 25.6.1979. The regulation of the scheme further clarifies that such Representatives would not be members of the Banks' regular staff, as Sri Gupta was appointed by the Bank on commission basis, so he would neither be treated as employee of the Bank nor be entitled to regularisation in the bank or any relief. Morever, notwithstanding above as per Sec. 2(oo)(bb) of the Industrial Dispute Act, 1947, the termination of service as per stipulation of the contract of service is excluded from the definition of retrenchment.

6. The Bank Management in its additional rejoinder with categorical denials has pleaded irrespective of the aforesaid repeations, that Sri Lalit Kumar Gupta was engaged as a deposit collector purely on contractual basis of 3% commission over the amount collected by him.

FINDING WITH REASONING

7. In this case, WWI Lalit Kumar Gupta, the alleged workman himself for his sake, and MW1 Sri Niwas Pandey, and MW2 Sita Ram Ghosh, the Branch and Senior Managers respectively for the Bank Management have been examined.

The testimony of the workman Lalit Kumar Gupta on capable to read English to some extent (WW1) is that as per the agreement (Marked X for identification) between both the parties under his signature (Ext. W.6) he had deposited Security Money Rs. 2000 (Money Receipt dt. 23.6.79-Ext.W.7) as per the Introduce from letter/Authority

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(Marked X having illigible) issued to him and accordingly he worked as Deposit Collector/Agent on his commission under the Laghu Bachat Yojna Deposit Scheme (Ext.W.9). He was paid his commission as per the two certificates (Exts.W.1 and W1/1) for his work for the period 26.6.78 to 10.6.1994 as per the papers of the deposits of money in the Bank (Ext.W.5 series). The workman had also discharged his duty such as the opening of Shambhu Sao's A/c No. 1071 (Ext.W.10) under the said scheme, but he was stopped from the work without and notice/ compensation. On his demand Notice (Ext. W.4) as per Postal Receipt (Ext. W.2) for reinstatement with full back wages, the Management given its reply (Ext. W.3) for it, refuting his claim. Admitting his letter of introduction/ Authority (marked X for identification under his signature (Ext. W.6) not considerable as a letter of appointment, the workman (WWI) has affirmed in his cross examination that the para 9 of the Rule under the Laghu Bachat Yojna (its copy-Ext.M.1) describes "a Deposit collection is appointed by the Bank purely on commission basis; hence he will neither be treated as an employee of the Bank nor be entitled to get regular appointment in the Bank."

8. Whereas MWI Niwas Pandey as then Accountant posted at the Banaras State Bank (which already merged with Baroda) at Muzaffarpur Branch at the relevant period has positively affirmed the case of the Management that the workman concerned was engaged as Commission Agent known as "Deposit Collector" to collect money from door to door, and to deposit the same on the Bank in the year 1979 under the Laghu Bachat Yojna Scheme; for the said work, the Bank initially used to pay him 3% commission, later on increased 3.5% commission out of the collected amount, the said Scheme was closed in the month of June, 1994; so accordingly the work of the Commission Agent was stopped by the Bank, and that the concerned workman did not render any service to the Bank excepting his work as Commission Agent for the said scheme. Likewise, the statement of MW2 Sitaram Ghosh, the Senior Manager, Bank of Baroda is quite corrobative and supportive to the case of the Bank Management. To him, the said Scheme was in operation in the year 1993 and was closed later on, and the workman Lalit Kr. Gupta was not given any other service except the working as Deposit Collector under the said Scheme and he was not under the control of the Bank Branch Manager for day to day affairs; posting of Ledger Nos. 37, 39 and 35 in 26th to 28th Oct. and 01st Nov., 1979 and was beyond his (MW2) knowledge, nor it was asked to do so. He (MW2) has established that the workman was not given a termination notice, as it was not required just as the question of compensation payment for it acrose not. The workman is alleged to have worked accordingly for about 10 months at the relevant time.

9. Mr. D.K. Jha, the Learned Advocate for the workman submits that the plea of the Management that the alleged termination of the workman falls under exception clause 2(oo)(bb) of the Sec. 2 of the I.D. Act but it has been superceded by the case law as reported in 2011. AIR SC (D) 3455 Devinder Singh Vs. Municipal Council, Sanadir wherein it has been held that 'workman, petitioner, contractual temporary or casual employee-all are workman's (Para 13-14), and that since the workman continuously served for more than statutory period, so his claim for reinstatement is legally sustainable. In quick response to it, Mr. K.N. Gupta, the Learned Advocate for the Management urged that the workman was engaged under the Laghu Bachat Yojna (Ext. M.1) on commission as stipulatable under its para 6 as he also received his commission (Exts. WW1 and 2) as his wages for his temporary work, so he is not a workman, nor even employer-employee relationship existed; and his engagement as deposit collector ended with the closure of the Scheme on 11.6.1994.

10. On the consideration of the materials available on the case record, also of submission of the aforesaid Learned Counsels both the parties, I undoubtedly came to the conclusion that admittedly the workman temporarily worked as Deposit Collector as known as Commission Agent for the few days as evident from the his documents Ext. W.5 series, the photo copies of the Laghu Bachat Yojna Deposit Account-17 Sheets under the said Scheme.

The Laghu Bachat Yojna shortly referred as (LBY) Rules of the Banaras State Bank Ltd. under its para I under the heading 'Appointment' in its last part reads as such:

> "A Deposit collector is appointed by the Bank purely on commission basis; hence he will neither be treated as an employee of the Bank nor be entitled to a regular appointment in the Bank."

This very factor totally disqualifies the alleged workman as the employee of the Management. In fact, the work of the alleged workman ended with the closure of the said LBY Scheme. There was no relationship of employer and employee between them as per the terms and conditions of his appointment as Deposit Collector/ Commission Agent on commission basis purely temporary. Hence the Banking Regulation Act, 1949 under Sec. 10(1)(b) does not bar employment of persons on commission as held in the case of Indian Bank Association Vs. Workman of Syndicate bank 2001(3) Sec. 36(DB). Though the ending of the workman's such job ended with the closure of the aforesaid Scheme, which was itself purely temporarily in nature.

Therefore, it is responded to the Reference as such:

> "In view of the admitted facts of the petitioner working as Deposit Collecter/Commission Agent on commission basis no question of his termination of his

alleged services by the Management w.e.f. 10.6.94 arises. His case falls under the exception (bb) of Sec. 2 (oo) of the Industrial Dispute Act, 1947. Hence, the workman/petitioner Lalit Kumar Gupta is not entitled to any relief."

KISHORI RAM, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मैनेजर, डिपार्टमेन्ट ऑफ टेलीकमुनिकेशन, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एल.सी./आर./320/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2012 को प्राप्त हुआ था।

[सं. एल-40012/233/1999-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3365.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/320/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Chief General Manager, Deptt. of Telecommunication, Bhopal and their workman, which was received by the Central Government on 03.10.2012.

[No. L-40012/233/1999-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/320/99

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Iqbal Ahmed,
S/o Ramzan Khan,
Chota Chowk,
Sindhi Market,
Distt. Shajapur, Bhopal ...Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal ...Management

AWARD

Passed on this 14th day of September, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-40012/233/99/IR(DU) dated 21.10.99 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Iqbal Ahmed w.e.f. 26.3.99 is justified? If not, to what relief the workman is entitled?"

2. The case of the workman, in short, is that he was engaged as a labour in July 1986 under Sub Divisional Engineer, Telecom, Shajapur and worked till 31.3.99 when he was terminated without notice and without payment of compensation in violation of the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). He worked more than 240 days in each calendar year. It is stated that a scheme was formulated on 7.11.89 to regularize the casual labours in view of the direction of the Hon'ble Supreme Court. The workman was also entitled to be regularized in accordance with the scheme. It is submitted that the order of termination be set aside and the workman be reinstated with direction to pay regular pay with cost.

3. The management appeared and filed Written Statement. The case of the management interalia is that the alleged workman was never appointed by the management and had never worked in the Sub Division since 1986. As such the questions of termination from service and regularization do not arise. It is stated that Section 25-F of the Act, 1947 is not applicable. In view of the above facts, the alleged workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication:—

I. Whether there is relationship of employer and employee between the management and the alleged workman?

II. Whether the action of the management in terminating the services of Shri Iqbal Ahmed w.e.f. 26.3.99 is justified?

III. To what relief the workman is entitled?

Issue No. I & II

5. Both the issues are taken up together for the sake of convenience. The workman has not adduced any evidence to prove his case.

6. The management has examined one witness. The management witness Shri Bhagchand Joshi is Sub Divisional Engineer, legal at Shajapur. He has stated that the alleged workman was never engaged as per record.

The claim of the workman for regularization in the department is baseless, fabricated and frivolous. His evidence is unrebutted. He was been cross-examined at length but there is nothing to disbelieve the evidence of the management witness. There is no chit of paper to show that the alleged workman was ever engaged in the department. It is clear from the evidence that there was no relationship of employer and employee. It is evident that the question of violation of the provision of Section 25-F of the Act, 1947 does not arise. Since he was not the employee of the management, the question of regularization does not also arise. Both the issues are, thus, answered against the workman and in favour of the management.

7. **Issue No. III**

On the basis of the discussion made above, it is clear that the workman has no case. As such he is not entitled to any relief.

Accordingly the reference is answered.

8. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिंटेंडेन्ट आर्केलिजिस्ट, आगरा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 196 आफ 99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/10/2012 को प्राप्त हुआ था।

[सं. एल-42011/03/1999-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3366.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. Case No. 196 of 99) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Superintendent Archaeologicst, Agra and their workman, which was received by the Central Government on 03.10.2012.

[No. L-42011/03/1999-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PRAKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 196 of 99

Between—

Ramesh Chandra Branch Secretary
Bhartiya Puratatva Sarvekshana Karmchari Parishad (INTUC),
Namneir Agra-282 002

And

The Superintending Archaeologist,
Archaeological Survey of India,
22 Mall Road,
Agra -282001

AWARD

1. Central Government, MoL, New Delhi vide notification no. L-42011/3/1999-IR(DU) dated 22.7.99 has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Archaeological Survey of India, Agra in terminating 47 employees represented by Branch Secretary, Bhartiya Purutatva Sarvekshan Karmachari Parishad, Agra, is legal and justified? If not to what relief the workman are entitled?

3. Brief facts are—

4. The aforesaid reference along with a list of 47 workers, have been sent by MoI, New Delhi, with the request whether the action of the opposite party in terminating 47 employees is legal and justified?

5. It is alleged by the claimants that they had been employed/engaged by the opposite party. It is alleged that they had been working from the period shown in the list and they have been terminated on the date which have been shown in the list against the name of the worker. It is stated that after putting in continuous service, they have been removed from service without issuing any notice or notice pay or retrenchment compensation as such the opposite party has breached the provisions of Section 25F, G and H of the Act. It is also alleged that the opposite party have engaged new workers after the removal of these workers, the details of such workers has been filed, after getting a photocopy from the Labour Court, Agra. It is also alleged that the opposite party in appointing the workers is following an unfair labour practice. They have engaged such workers who have lost the battle in CGIT Delhi as well as such workers whose reference has been dismissed. Therefore, they have prayed that they may kindly be reinstated in service with consequential benefits.

6. Opposite party has filed the written statement alleging that the workers were daily paid casual labours, they have been engaged for the repair of the old buildings,

the work was being taken as casual and was of intermittent nature, they were being engaged from the open market.

7. Whenever the work of the repair was finished their services stood terminated automatically they have never been given any appointment letter or termination letter. Therefore, these claimants are not entitled to any relief.

8. Rejoinder has also been filed in the case but nothing new has been pleaded by the union therein.

9. Claimant has filed copy of two awards passed in I. D. No. 80/89 and I.D. No. 120/89 which are paper no. 18/2-8. Claimant has also filed 30 documents vide list 31./ 2-3 mostly these are the photocopies copy of FIR etc., copy of seniority list, news paper cutting copy of judgment of Hon'ble High court etc.

10. I will discuss the relevancy of these documents where ever is deemed found fit.

11. Claimant has also filed the list of workers vide list paper no 20/1 these list are paper No. 20/2-9. He has also filed paper no.19/3-19/9. He has also filed paper no. l/1-30.

12. Heard and perused the record.

13. Both the parties have also adduced oral evidence in support of their pleadings. Claimant has produced himself as w.w. 1 in the name of Moti Ram.

14. Opposite party has produced Sri M.C. Sharma Assistant Superintendent ASI as M.W. 1.

15. I have examined the documentary evidence adduced by the claimant.

16. In the oral evidence Sri Sharma M.W. 1 has stated that no appointment letter was ever issued to any of these workers. It is stated that the work of repair was of intermittent nature and casual labours were engaged from open market when ever need arises. Therefore no termination letter has been issued to either of the workers.

17. It is stated that one of the worker Moti Ram has been produced as w.w.1. When he was cross examined on the point of termination he stated that he was removed on 01.03.93. Opposite party stated that there is no date of termination mentioned in the reference order. For a moment a cognizance is taken of the list enclosed with the reference order where in the name of Moti has been shown at serial no. 4 but his date of termination has been mentioned as 03.06.94. Date 01.03.93 or the year 1993 has not been shown either against the names of the workers or date of termination of their services in the reference order. The dates of termination of the services of the workers involved in the present reference order have been shown as per list attached with the reference order is 1994 or 1995. Date of termination has also not been shown in the reference order.

18. From the above it is concluded that the claimants/ union have miserably failed to file their own list supported by their evidence before this tribunal which could have been relied upon.

19. I have also considered the evidence regarding the continuity of service of completion of 240 days of each worker. There is no cogent evidence on behalf of the union that either on or each worker named in the reference order have completed 240 day or more service prior to termination of their service preceding the date of their termination (though no termination date is found mentioned in the reference order).

20. It is also contended that after the removal of these workers the opposite party has employed new workers and my attention has been drawn towards the list paper no. 20/-2-9. I have gone through these documents and I found that these documents are not authentic and reliable for the reasons that the person who has prepared it has not been examined before the tribunal. Therefore, in the absence of cogent evidence on this point the tribunal is not ready to believe the documents.

21. The union of the claimant has not mentioned any of the names which have been shown in this list in their claim statement. They have not mentioned the name of any of these workers in the evidence of w.w.1 which have been filed in the shape of the affidavit. Therefore, the claimant cannot take advantage of this contention unless specific pleadings are there and corroborative evidence is produced in this regard.

22. In view of foregoing it is concluded that the union has miserably failed to establish their case before the tribunal. The result is that they are not entitled to get any relief in pursuance of the present reference order which is bound to be answered against the union and in favour of the management.

23. Reference is answered accordingly against the union and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3367.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिगरेट्टी (पी), डिपार्टमैन्ट आफ पोस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 95/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-10-2012 को प्राप्त हुआ था।

[सं. एल-40011/16/2011-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

4073 GI/12-16

New Delhi, the 15th October, 2012

S.O. 3367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 95/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to The Secretary (P) Department of Post and their workman, which was received by the Central Government on 12.10.2012.

[No. L-40011/16/2011-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 25th September, 2012

Present : A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 95/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Department of Posts and their Workmen]

Between :

The General Secretary ...1st Party/Petitioner

All India Postal Employees Progressive Union

Plot No. 5, VGP Pon Nagar

First Main Road, Sembakkam

Chennai-600037

Vs.

The Secretary (P) ...2nd Party/Respondent

Department of Posts, Dak Sevak Bhawan

New Delhi-11 0001

Appearance :

For the 1st Party/Petitioner : M/s. S. Gunaseelan, Advocate

For the 2nd Party/Management : M/s. A. Ashok Kumar, Advocate

AWARD

The Central Government, Ministry of labour & Employment vide its Order No. L-40011/16/2011-IR (DU) dated 22.11.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Management of the Department of Posts, in denying the demand Nos. X, XI, XII, XIII, XIV, XV, XVII and XIX raised by All India Postal employees Union vide its letter dated 10.03.2010 are legal and justified? What relief the Union is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as 95/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim and Counter Statement as the case may be.

3. The Claim Statement averments bereft of unnecessary details are as follows:

The Petitioner Union espousing the cause of members of the Union under Group "D", Group "C", TBOP/BCR MMS Drivers of the Postal Department had informal discussion with the Respondent. The Union had placed several demands before the Conciliation Officer under Section-2(k) of the I. D. Act, which interalia are as follows:

(a) Treatment of 14 days strike period taken place during December, 2000 by the Postal and RMS Employees as duty for all purposes.

(b) Implementation of Dutta Committee Recommendations in regard to revision of pay-scales of certain category of employees.

(c) Restoration of norms based lower selection grade posts as divisional cadre.

(d) Grant of informal Trade Union facilities to the Petitioner's Union.

(e) Regularization of services of reserved trained pool candidates in Group "C" cadre and casual labourers in Postman and Group "D" cadres for the purpose of qualifying service.

(f) Removal of imbalance in LSG/HSG-II/HSG-I cadres.

(g) Restoration of post reduced/abolished in excess over the policy decision of the Government.

(h) Revival of 690 Postal Assistants posts erroneously abolished during the process of creation of 1622 Higher Selection Grade-I posts by conversion of 10% Higher Selection Grade-II posts.

Some more demands were made of which a few were dropped. The workmen are suffering mentally and economically. The demands are very fair and just and are inevitable for being considered and granted request had been there before the Management for settling the demands amicably which was in vain due to stiff stand of the Management. The demands were rational and fair in the prevailing facts and circumstances in our country. It

is prayed that Respondent may be directed to grant the demands.

4. Counter Statement averments bereft of unnecessary details are as follows:

As per the CCS (RSA) Rules, 1993 a Service Association should strictly be restricted to a distinct category of employees having common interest. Membership of the Government Servant will be automatically discontinued on his ceasing to belong to that category. The heterogeneity of the Petitioner Union due to its composition having employees of Group "C" and Group "D" categories makes it ineligible even for consideration for its recognition, notwithstanding its negligible number of membership. The demands involve policy decision of the departments of posts and are only general in nature. Hence the issues are not maintainable and are to be rejected as being devoid of merit.

(i) Reply to Demand-(a) is: as per instructions issued vide DoPT's OM No. 41016/1 (S)/90-Estt. (B) dated 01.05.1991, strike period is regulated under the principle of "No Work No Pay", which is in the form of direction of the cabinet. The only competent authority to grant relaxation in the matter is the Cabinet. The strike of December 2000 was declared as illegal and the States were asked to enforce ESMA. In view of the totality of circumstances it was decided with the approval of MoC and IT not to refer the issue to Cabinet in the light of the above no further action is warranted.

(ii) Reply to demand-(b) is : Dutta Committee did not recommend revision of pay-scales of Group "D". As regards that of TBOP/BCR committee could not reach any unanimity of view. As regards to that of Drivers, committee concluded that there were no special sanctions or responsibilities to mark as superior to their counterparts in other departments in order to mark them as distinct. Ministry also did not recommend any upgradation of pay-scales for any cadre of staff.

(iii) Reply to Demand-(c) : the recognized unions are fully abreast of the situation regarding LSG cadre as circle cadre was discussed number of time and it is settled issue. Taking LSG as Circle Cadre is against the spirit of agreement of 1985 and is not based on facts. In fact even applicant union has no right to have meetings negotiation and that is way they are not conversant with the developments which took place from time to time.

(iv) Reply to Demand-(d) is : as per the directions of the Hon'ble High Court of Madras petitioner union was not a participant in the re-verification process carried out by the department and due to its unrecognized status Petitioner Union is not entitled to the facilities under the CCS (RSA) Rules.

(v) Reply to Demand-(e) is : there is no scope for further examination of the proposal in the light of the judgment of the Supreme Court.

(vi) Reply to Demand-(f) is that the aspect will be examined with the restructuring of cadre now undertaken by the Department.

(vii) Reply to Demand-(g) is that there was no excess abolition of posts and the action was strictly according to Government instructions.

(viii) Reply to Demand-(h) is that the posts were abolished to provide matching saving in the process of having 1622 additional posts of Higher Selection Grade-I as per standing instructions of the Government. There is no justification to reopen the issue.

5. Thus the issues raised by the Union have been met and possible action has been taken wherever possible. Most of the issues raised hit at the major policy decisions of the Government and any direction in contravention thereof may have cascading effect and imbalance the basic structure Petitioner Union has no locus-standi to the dispute. Employees in the Department of Posts are regulated by various service and financial rules with adequate safeguards in the form of : (i) Joint Consultative Machinery and Compulsory Arbitration Scheme, (ii) Central Administrative Tribunal, (iii) Central, Pay Commission and (iv) A well-organized public grievance redressal machinery for redressal of grievances. They may not be regulated by labour laws. It is requested that the matter may be dropped.

6. Points for consideration are:

(i) Whether denying the Demand Nos.10 to 15, 17 and 19 of the Petitioner Union is legal and justified?

(ii) To what relief the concerned union is entitled?

7. Evidence consists of the testimony of WW1 and Ex.W1 to Ex.W39 on the petitioner's side and testimony of MW1 and Ex. M1 to Ex. M9 on the Respondent's side.

Points (i) & (ii)

8. Heard both sides. Perused the records, documents, evidence and written arguments submitted on either side. Both sides vehemently argued in terms of their case in the respective pleadings with reference to records, documents and evidence and cited decisions. The prominent arguments advanced on behalf of the petitioner are that P & T Department is an industry and the dispute before this forum is maintainable and the same has to be

upheld. RSA Rules, 1993 Statutory Rule cannot have overriding effect on I.D. Act, 1947. Recognition also has nothing to do with I.D. Act. The strike of P &T employees during October, 1996, from 09.07.1998 to 16.07.1998, from 05.12.2000 to 18.12.2000 (as Earned Leave) were ordered to be treated as leave by the Government of India. Once the period of strike is thus treated as leave the condition for accumulation of leave in a particular period in the order of the Hon'ble MoC dated 27.10.2008 against the spirit of Statutory Rules is ultra vires. The attempt to put condition is only to dilute and digress the issue and with a vie to non-implement the decision of MoC and IT. No documentary evidence is filed for promulgating ESMA declaring the strike illegal by Government. So also there is no document for Minister's rejection to refer the case to the Union Cabinet as argued by Respondent. In view of Supreme Court decision in 5 SCC-572-1994 declaring in an illegal strike if justified by circumstances entitling the strikers for the wages during the strike period. The 14 days strike during December, 2000 was justified by circumstances entitling the employees for wages. The Dutta Committee had recommended the entry level pay for Group "D" Staff as Rs. 2,650-65-3,300-70-4,000 (as per 5th Central Pay Commission scales). The committee finally recommended the following pay-scales in old scale:

(i) Lower Selection Grade/5,500-8,650 Time bound one promotion

(ii) Higher Selection Grade-II Rs. 6,500-9,500 Biennial Cadre Review

(iii) Higher Selection Grade-I Rs. 7,450-11,500.

Though internal committee rejected Rs. 7,450 in the old scale for Higher Selection Grade-I, 6th CPC reckoned the pay-scales as Rs. 7,450–11,500 for fixation in the new scale and thus the demand got settled in the new scale of pay. Dutta Committee accepted the merits for revision of pay scales of Mail Motor Service Drivers. By changing the nomenclature for MMS Drivers common category concept may be delinked for justifying upgraded pay-scales. There is no document for proof of rejection of Dutta Committee Recommendations by the Ministry. The rejection by internal committee of revision of postal employees pay scale is totally unjustified, unfair and illegal. It is not proved by Respondent that agreement was reached by the Unions for making the lower selection grade posts as circle cadre. For want of monetary benefits after promotion to LSG Cadre and transfer liability to one place to other involved most postal officials declined LSG promotions. Following conciliatory talks held by the RLC(c), Delhi the Respondent agreed to divisionalize LSG Cadre and orders were issued w.e.f. 30.12.1985. By order of the Respondent making LSG Cadre as circle cadre during May 2006 many employees were affected forcing them to decline their promotion. Consequent to 6th CPC postal employees also got financial upgradations on completion of 10/20/30 years of service. So no separate higher pay is granted to LSG Cadre but transfer liabilities are involved. Respondent may restore divisionalization of LSG Cadre with protection seniority in Circle Cadre for higher promotions to HSG-II and HSG-I Cadres. Respondent may hold a referendum among the eligible officials to clinch the issue once for all. RSA Rules is unconstitutional and run counter to Trade Union Act, 1926, decisions of Indian Labour Conferences, International Labour Organization, Supreme Court Judgments, 1 and 2nd National Labour Commission Recommendations. RSA Rules, 1993 cannot override Act. Petitioner Union being an affiliate of Centrally Recognized Labour Progressive Federation has been requesting for informal Trade Union Facility. Trade Unions such as INTUC, BMS, HMS, CITU and AITUC, etc. are allowed to function. After 6th CPC Group "D" cadre got abolished and there is no distinct category available in Postal Department. Initially under RSA Rules, 1993 no cadre union could be recognized. But Postal Department accorded recognition to Savings Bank Central Organization Association. Supervisory Association was recognized without verification process based on pendency of a case in the Court of Law. Informal meeting facilitles to Postal SC/ST Employees Welfare Association are extended. RLC recommended grant of informal facilities. Schemes were evolved to regularize reserved trained post candidates in Group "C" Cadre and Casual Labourers in Postman and Group "D" Cadre and counting the temporary services for the qualifying service after regularization is justified. It is settled that on completion of 480 days in two years such category of employees have to be regularized and it is justified to reckon their past services for calculation of qualifying services. Proposals for upgradation of 2356 LSG posts to HSG-II and 30000 time scale posts to LSG Cadre to offset the imbalance. The anomaly had arisen during creation of 1622 posts of HSG-I posts by upgrading 10% lower posts. The imbalance occurred due to wrong assessment, calculation and approach of the Respondent. Respondent vaguely rejected the claim. In the mater of reduction of 1% posts every year, the posts screened and kept vacant for more than 1 year and got abolished (deemed concept) as per Ministry of Finance instructions have not been taken into account. The justified posts for creation on clearance by Screening Committee, not cleared by the Nodal Ministry should have been taken into account. As per staff strength of March 2001 and March 2007, 56,379 posts were reduced in Postal Department. The total reduction in percentage reads as:

Group "C"	- 14%
Postman	- 19%
Group "D"	- 28%
Gramin Dak Sevak	- 4%

Three postal circles had not furnished their reports. The figures are based on physical staff strength and not on sanction strength. Respondent should have filed all the relevant documents, copies of orders and copies of proposals submitted to the Department of Personnel and Training and Ministry of Finance. Respondent failed to prove conditionalities of abolition of 690 Postal Assistant posts for matching savings in this process. Order for creation and abolition of posts on matching cost was arbitrarily issued. Recognized Unions action for revival of erroneously abolished posts did not bear fruit.

9. Respondent's arguments are nothing more than the case pleaded in the Counter Statement.

10. Reliance was placed on behalf of the petitioner to the decision of the High Court of Kerala in KUNJAN BASKARAN AND OTHERS VS. SUB-DIVISIONAL OFFICER, TELEGRAPHS AND OTHERS (1982-II-LLN-294) wherein it was held "Postal, telegraph and telephone services are named public utility services under S.2(n) of the Industrial Disputes Act, 1947. They are industries to which the provisions of Ss. 10, 12 and 22 directly apply. The posts and telegraphs department cannot declare a lockout without notice; the employees of the department cannot also go on strike without notice. In view of the above specific provisions directly dealing with employment in the postal and telegraph services, it is not possible for anyone to suggest, with any amount of seriousness, that the posts and telegraphs department is not an industry under the Industrial Disputes Act."

11. The reference is regarding the legality and justifiability of denial of demands enumerated as No. 10 to 15, 17 and 19 made by the Petitioner Union. While the sum and substance of the arguments on behalf of the petitioner Union is that the demands are rational, just and fair, that the dispute is maintainable and that the Respondent has not produced relevant documents, copies of orders or proposals submitted to the department of personnel and training and that Respondent failed to prove their respective contentions, the contra contentions focused on behalf of the Respondent, inter-alia are that the demands are mostly involving policy decisions of the Department of Posts and are only general in nature apart from being not sustainable under the ID Act.

12. The decision cited above clinchingly settles the issue that the Postal Department is industry and that there is employer-employee relationship between the department and its workmen and the dispute is clearly maintainable in this forum. The contention of the Respondent that the dispute is not maintainable is hereby negated. I am also fortified in holding so in view of the sustainable contention on behalf of the petitioner that the departmental RSA Rules, 1993 cannot have overriding effect on ID Act, 1947 and that whether or not the Union has a recognized status is not material and it has nothing to do with the ID Act.

13. We may now examine the enumerated eight demands of the Petitioner Union referred for consideration in this dispute by the Ministry as demand nos. X to XV, XVII and XIX appearing in the sequence of (a) to (h) in the pleadings.

14. Regarding treatment of 14 days' strike period in December 2000 as duty for all purposes, while the stand of the petitioner is that the said strike was justified by circumstances and the employees are entitled for wages, gaining support from their own contention that the said strike period has been ordered to be treated as leave by the Government of India, and that once the same has been treated as leave the condition of accumulation of leave in a particular period in the order of the Ministry of Communications dated 27-10-2008 is against the spirit of statutory rules and is ultra-vires. Further support is sought to be obtained from the contention that such an attempt to put condition is only to dilute and digress the issue and not to give effect to the above decision of the Ministry. There is also no documentary proof showing the strike to have been declared illegal or to show Minister's rejection to refer the case to Union Cabinet. Mention is also made of a decision of the Apex Court of 1994-5-SCC- 572 without producing a copy thereof which purports to hold that though strikes declared illegal when are justified by circumstances, the strikers are entitled to wages during that period and therefore the strikers are entitled to wages. A copy of the said Supreme Court judgment has not been supplied for reference. On the aspect, the argument of the Respondent is that it was with the approval of the Ministry of Communication that it was not referred to the Cabinet. Though there is no documentary evidence as to these aspects projected on behalf of the Respondent and in the absence of evidence of petitioner as to the strike being justified by any circumstances, it is only the contention of the Respondent that is to be upheld and I do so.

15. Regarding the second demand referred, the challenge being against the allegedly unjustified, unfair and illegal rejection by the internal committee of revision of pay-scales the stand of the Respondent is that the Group of Ministers was not recommending the upgradation of pay-scales for cogent reasons as have been enumerated in the Counter Statement. Though there is no proof for rejection of the Dutta Committee recommendations by the Ministry there is oral testimony of the Respondent for non-acceptance of the same.

16. Regarding the third demand, as against the contention of the Petitioner Union mentioned above, the approach of the Respondent that in terms of the locus-standi of the Petitioner Union to espouse the matter for

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want of recognition, its having had no right as allegedly or occasion to have negotiations with the department, it being not a participant in the meetings held with the recognized federations and unions and which are fully abreast of the situation after discussion in which the issue was settled and the said settlement being not to the awareness of the petitioner union, making LSG as Circle Cadre is against the spirit of the agreement reached in 1985. While the fact may be a settled one inasmuch as it has not been proved to be otherwise on behalf of the Petitioner Union that aspect is only to be left intact in terms of the case of the Respondent.

17. The arguments on behalf of the petitioner regarding internal trade union facilities, as the fourth demand, sought to be repelled by the Respondent in-terms of CCS (RSA) Rules, 1993 and the absence of re-verification process by the department in 2010, the unrecognized status of the petitioner union proclaiming them not entitled to the 1993 rules facilities cannot be sustained because of the prevailing impact of the Trade Union Act, 1926, ID Act, 1947, etc. So the grant of informal trade union facilities to petitioner's union would only be just and legal. Yet another re-verification process can be got done by the Respondent. Their proposal for holding a referendum among the eligible officials to clinch the issue once for all is only worth of being considered and executed.

18. Regarding the fifth demand, the defence on behalf of the Respondent quoting some judgment of the Supreme Court without making mention of any details and stamping the issue saying that there is no further scope for examination does not stand substantiated even with the production of a copy of the very same judgment. Whatever be the direction in the judgment the same works itself and there cannot be further adjudication touching the matter covered under it and hence the said reference is to be held answered by the decision in the said judgment of the Hon'ble Supreme Court.

19. Regarding the removal of imbalance in LSG/HSG-II/HSG-I cadres as against the argument of the petitioner that no specific details or assurances are recorded by the Management in the restructuring process as a cause of concern for petitioner Union, the guarantee that the same will be examined is to be duly and efficaciously complied with, so as to deprive the foreboding or apprehension of the Petitioner Union.

20. Regarding the seventh and eighth demands for restoration of posts reduced in excess over the policy decision of the Government the claim of the Management that there was no excess abolition is to be re-verified and the petitioner has to be convinced as to that fact. If due to wrong assessment, wrong calculation or wrong approach a flaw or mistake has resulted that is easily amendable to correction by a re-verification in a non-erratic manner of accomplishing it. It is an aspect touching upon the arithmetical or methodological accuracy which has to be one and the same, invariably, if approached with a sense and method of exactitude. In other words when done properly it cannot admit any marginal discrepancies. It has to be the same figure or the same situation consistently. When there is an apprehension or bonafide belief of erroneous abolition of posts in excess over the policy decision that has to be reopened and scrutinized again to set right the mistake, if any or at least to dispel the reasonable doubt centering around it. So there shall be a direction to that effect and ordered accordingly.

21. In the light of the above discussion I am to hold that the Petitioner Union is not totally non-suited in putting forward the demands.

22. In the result denial of demand nos. XIII, XV, XVII and XIX is not legal and justified, denial of demand nos. X, XI & XII is legal and justified and demand no. XIV shall stand by the judgment of the Hon'ble Apex Court.

23. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day 25th September, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri R. Venkataraman

For the 2nd Party/1st Management : MW1, Sri Kulbir Singh

Documents Marked:

On the Petitioner's side

Ex. No.	Date	Description
Ex.W1	01-12-2011	Order passed by Secretary XCGIT, Chennai.
Ex.W2	22-11-2011	Order to Under Secretary, Ministry of Labour, Government of India, New Delhi.
Ex.W3	26-06-2006	Form "C" issued by Registrar of Trade Unions, Chennai.
Ex.W4	30-06-2006	Application for affiliation with Labour Progressive Federation, Chennai.
Ex.W5	5/2008	Letter for personal appearance of General Secretary, PEPU summoned by Labour Officer, Chennai.
Ex.W6	26-06-2008	Labour Office, Chennai issue of Certificate of Registration under Trade Union Act, 1926 by Deputy Labour Commissioner, Chennai-600 006.
Ex.W7	11-01-2008	Order of Dy. Secretary, Ministry of Labour, Government of India, New Delhi.

Ex.W8	25-01-2008	Letter of General Secretary, PEPU addressed to Hon'ble Minister of Communication of IT submitted at Pudukottai.
Ex.W9	10-09-2009	Letter of Director, Southern Railway & Legal, O/o Secretary (P), New Delhi.
Ex.W10	25-09-2009	Letter of General Secretary PEPU addressed to Secretary (P), New Delhi.
Ex.W11	25-09-2009	Letter of General Secretary PEPU addressed to Secretary (P) New Delhi.
Ex.W12	20-11-2009	Letter of Director, Southern Railway and Legal, O/o Secretary (P), New Delhi.
Ex.W13	30-11-2009	Letter of General Secretary PErU addressed to Director, Southern Railway & Legal, O/o Secretary (P), New Delhi.
Ex.W14	10-12-2009	Letter of Director Southern Railway and Legal O/o Secretary (P), New Delhi.
Ex.W15	10-12-2009	Letter of General Secretary, PEPU Addressed to Secretary (P), New Delhi.
Ex.W16	10-03-2009	Letter of General Secretary, PEPU Addressed to Chief Labour Commissioner, New Delhi.
Ex.W17	24-01-2011	Minutes of RCL (Central), Chennai
Ex.W18	30-03-2011	Report on failure of conciliation submitted by RLC -@, Chennai.
Ex.W19	22-10-2007	News Paper Cuttings.
Ex.W20	24-03-2000	Statement of Postal Federation regarding department of strike.
Ex.W21	21-10-2000	Letter of Postal Federation addressed to Hon'ble M-O- (C), New Delhi.
Ex.W22	19-10-2000	Press statement issued by Postal Federation regarding proposal Indefinite strike.
Ex.W23	02-08-1998	D-O- Letter of Director S-R- & legal O/o Secretary (P), New Delhi.
Ex.W24	27-10-2008	Letter of Director S-R- & Legal O/o Secretary (P), New Delhi.
Ex.W25	03-10-2008	Paper Cutting.
Ex.W26	20-11-2009	Letter from President LPF to Hon'ble MoC Government of India, New Delhi.
Ex-W27	08-11-2011	Hindu Paper Cutting.
Ex-W28	18-12-1998	Dutta Committee Report.
Ex-W29	21-07-2000	Internal Committee report.
Ex-W30	02-01-2007	Letter of Chief PMG T-N- Circle.
Ex.W31	February, 05	Copy of minutes of JCM (National Council).
Ex.W32	22-03-2011	Letter of General Secretary addressed to RL ©,C.
Ex. W33	02-07-2009	Letter of General Secretary addressed to Secretary (P), New Delhi.
Ex.W34	30-05-2006	Copy of revised Recruitment Rules issued by Secretary (P), New Delhi.
Ex.W35	17-12-2007	Reply of Director (T&E), O/o Secretary (P), New Delhi.
Ex.W36	22-01-2008	Reply letter of Deputy Director General (Estt-), O/o Secretary (P), New Delhi.
Ex.W37	07-08-2009	Letter of General Secretary PEPU addressed to Secretary (P), New Delhi.
Ex.W38	01-06-2005	Letter of General Secretary All India Postal Employees Union Group "C" addressed to Secretary (P), New Delhi.
Ex.W39	16-04-2003	Letter addressed to Hon'ble MoC.

On the Management's side

Ex. No-	Date	Description
Ex.M1	21-07-2000	Copy of the report of the Inter-Departmental Committee Set-up vide OM No- 25-06-2000.
Ex.M2	-	Copy of the Writ Petition No- 17/ 2009 filed by Department of Posts before Supreme Court.
Ex.M3	31-08-2010	Copy of the DO 10-12/2007-Southern Railway.
Ex.M4	17-06-2011	Copy of the order of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in OA " No- 903/2009, OA Nos- 67, 68, 69, 70, 76, 77, 78, 90, 95, 98, 110, 114, 158, 197, 233, 312, 349, 384 of 2010.
Ex.M5	26-08-2011	Copy of the order of Hon'ble Central Administrative Tribunal, Madras in OA No- 238 and 528 of 2010.
Ex.M6	—	Copy of OA No- 432 of 2011 before Hon'ble Central Administrative Tribunal, Patna Bench.
Ex.M7	06-02-2012	Copy of the Writ Petition No- 25335 of 2010 before Hon'ble High Court, Madras.
Ex.M8	01-05-1991	Xeroxes of OM No- 41016/1(S)/90 Estt- (B) dated 01-05-1991 issued by DoPT.
Ex.M9	—	Related to Xerox copy of the Department of Posts here marking to Lower Selection Grade as Corcle Cadre.

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3368.—औधागिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजमैन्ट ऑफ सॉफ्ट वियर टेक्नोलोजी पार्क ऑफ इन्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचाट (संदर्भ संख्या 12/2012/252) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2012 को प्राप्त हुआ था।

[सं. एल-42012/88/2011-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3368.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 12/2012/252) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Dhanbad as shown in the Annexure, in the Industrial dispute between The Management of Software Technology Park of India and their workman, which was received by the Central Government on 12.10.2012.

[No. L-42012/88/2011-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 12(A) OF 2012.

PARTIES: Employer in relation to the management of Software Technology Park of India and their workman.

APPEARANCES:

On behalf of the workman : Mr. T.K. Sahu,
Rep. of the workman.

On behalf of the Management : Mr. A.K. Sahu,
Rep. of the Management.

State: Bihar Industry: Information & Technology

Dated, Dhanbad, the 05th Sept., 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-42012/88/2011 (IR)(DU) dated 24.01.2012.

SCHEDULE

Whether the action of management of Software Technology Park of India, Patna in terminating the services of Shri Sunil Ram without attracting Section 25(F) of I.D. Act., 1947 is legal and justified? What relief the workman is entitled to?"

2. None appeared for the workman Sunil Ram nor the workman himself nor written statement filed on behalf of the workman despite two Regd. notices on his address noted in the Reference Case. Mr. T.K. Sahu, the Representative for the Management is present and submits that the workman has already received a sum of Rs.15,220/- for the claim in the case so he is not turning up in the case; as such no longer the industrial dispute exists. In view of the aforesaid fact, I find that the conduct of the workman shown his disinterestedness to pursue the case for the reasons best known to him. The industrial dispute in the Reference Case related to termination of his service without compliance of Sec. 25 (F) of the I.D. Act., 1947.

Under these circumstances, the case is closed and accordingly, it is passed an award of no dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3369.—औधागिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब पोस्ट मास्टर, सब पोस्ट आफिस हावेरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलौर के पंचाट (संदर्भ संख्या सी॰आर॰ 02/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2012 को प्राप्त हुआ था।

[सं. एल-40012/101/2004-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3369.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. C.R. No. 02/2006) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to the Sub Post Master, Sub Post office, Haveri and their workman, which was received by the Central Government on 08.10.2012.

[No. L-40012/101/2004-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT "SHRAM SADAN", III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BAN GALORE- 560 022

Dated: 18.09.2012

PRESENT

Shri S.N. NAVALGUND, Presiding Officer

C.R.No. 2/2006

I PARTY	**II PARTY**
Shri Suresh Bhovi, S/o Shri Ramappa Bhovi, R/o Bhovi Oni, Savanur P.O, District Haveri Karnataka State	The Sub Post Master, Sub Post Office, Department of Posts, Savanur Distt. Haveri, Karnataka State

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section(1) and Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(14 of 1947) has referred this dispute vide order No. L-40012/ 101/2004- IR(DU) dated 6.01.2006 for adjudication on the following Schedule:

SCHEDULE

"Whether the action of the management of Sub-post Master, Sub- post office, department of posts, Savanur, Distt. Haveri in terminating the services of Shri Suresh Bhovi w.e.f. 1.8.2002 is justified? If not, what relief the workman is entitled to?"

2. On receipt of the reference after registering in CR No. 2/ 2006 when notices were issued to both sides, both sides entered their appearance through their respective advocates and filed Claim statement and Counter Statement respectively.

3. In the claim statement filed by the first party it is alleged that he was appointed on 10.12.1996 as packer in clear vacant vacancy at sub post office Savanur on consolidated wage of Rs.2700 and after he served continuously for a period of 7 years 5 months sincerely, honestly and diligently to the entire satisfaction of his superiors abruptly on 1.08.2002 when as usual he had been to attend his work to his surprise and shock the sub post master without assigning any reason refused the work. This refusal to work to him by the sub post master w.e.f. 1.8.2002 amounts of unjust, arbitrary and illegal termination of his services. He has further stated that having regard to the fact that he had worked continuously for more than 240 days the action of the management is a clear case of retrenchment within the meaning of Section 2(00) of the Industrial Dispute Act and as the management did not comply with the mandatory requirement of Section 25F of the Industrial Dispute Act, the entire action of the second party cannot be sustained and he is entitle for reinstatement with backwages. It is further alleged that when he raised the dispute by filing the conciliation proceedings before the Assistant Labour Commissioner (Central) Hubli the second party took up frivolus contentions with a view to defeat his reasonable and just claim and did not come forward to consider his reasonable demand there by the conciliation failed and thereafter the government since did not consider the dispute fit for industrial adjudication, he approached Central Administrative Tribunal, Bangalore for redressal of his grievance in OA No.336/2005and after withdrawing the said petition with a liberty to approach the appropriate forum filed a writ petition No.24323/2005 before the Hon'ble High Court of Karnataka and the same came to be allowed directing the ministry to refer the dispute for industrial adjudication as such the delay in approaching this court be condoned. With these assertions he has prayed to hold that the second party management is not justified in terminating his services and to direct it to reinstate him with all consequential benefits including full back wages from the date of termination till the date of reinstatement and such other relief as deemed necessary in the industrial dispute.

4. In the counter statement filed for the second party it is contended the claim of the first party being for a post of Extra Departmental Agent (presently called Grameena Dak Sevak) in the Department of Posts. Govt. of India and such claim is governed by the rules framed by the government called the Extra Departmental Agents(Conduct & service Rules)1964 later amended as GDS(C&E)Rules 2001 and in view of this the department persistently contested that the first party being not a workman and this view of the department being upheld by the Hon'ble Supreme Court in the case of Superintendent of Post Offices Vs. P.K. Rajamma, reported in 1977 SCC(L&S)374 wherein it is held in clear terms that the extra departmental posts are government servants holding a civil post and this view of the department is also upheld by the Hon'ble Supreme Court in the case of UOI & Ors Vs. Kameshwar Prasad reported in 1998 SCC(L&S)447 and the Hon'ble Supreme Court while deciding a similar issue in the case of Himanshu Kumar Vidyarthi Vs. State of Bihar and Others reported in 1997 SCC(L&S)1079 further held that when an appointment is governed by statutory rules such department cannot be held as an Industry. Thus it is contended the first party is not a workman as such the reference or industrial adjudication is not maintainable. Further while denying the assertion made by the first party workman in the claim statement that he was appointed as a packer on 10.12.1996 and in that capacity he worked till 30.07.2002, further contended that in its Savanur Sub-Post Office there is only one post of Grameena Dak Sevak Packer which is manned by a regular Grameena Dak Sevak by one Shri A.M. Joshi since from 19.09.1981 as such his contention that he was working in that post from 10.02.1996 is totally false and that he has not produced proof for the same. It is further contended the conditions of service and employment of Grameena Dak Sevak the post to which the first party claims is governed by Grameena Dak Sevak (Conduct & Employment)Rules 2001 and Previously EDAs (C&S) Rules, 1964 and any appointment to these posts are through recruitment rules by notification calling for applications and no persons will be appointed without these rules and that first party has never been appointed to the post he claim. It is further contended under GDS rules the regular

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appointee will have to apply for leave providing his own substitute under his own responsibility for the work during his leave period and during such short spells, the regular appointee may engage an outsider to work in his place and substitute allowances would be paid and that first party has also not produced any documents to show that he worked in that capacity also. It is further contended the Hon'ble Supreme Court in the latest judgement reported in 2005 SCC(L&S)609 in the case of Manager, RBI, Bangalore Vs.S. Mani & Others having held that the burden of proving that claimant worked continuously for 240 days etc. lie on him and since the first party has failed to produce any evidence in that regard on this count also his claim is liable to be rejected. Lastly it is also contended the allegation made in the claim statement that the Hon'ble Supreme Court in Writ Petition 24323/2005 has directed the ministry to adjudicate the dispute is not correct since that case is still pending with the last action taken on 17.03.2006. Thus it is contended the claim of the first party is false and is liable to be dismissed.

5. With the above pleadings when the matter was posted for evidence on behalf of the second party while filing the affidavit of Shri P. Tippeswamy, Superintendent of Post offices, Haveri Postal Division, Haveri wherein he has sworn to the assertions made in the counter statement subjected him for cross-examination by the learned advocate appearing for the first party. In his cross-examination counsel for first party got exhibited Xerox copy of the certificate issued by the Post Master, Savanur as Ex.W1. Interalia the first party while filing his affidavit swearing to the assertions made in the claim statement while examining himself on oath as WW1 got marked attested copies of his election card issued on 4.07.2003; ration card issue on 24.05.2009 and certificate issued by Akhila Karnataka Bhovi Samaja, Savanur dated 24.03.2010 as Ex.W2 to W4 respectively.

6. With the above pleadings and evidence placed on record when the learned advocates appearing for the parties were called upon to address their arguments the learned advocate appearing for the second party filed his written argument wherein he has reiterated the contention taken in the counter statement and in its support produced the Photostat copies of the judgement passed in CA 2431/94, CA 3386/96 & CA 2319/07. Interalia the learned advocates appearing for the first party without bringing to my notice any document simply urged the first party workman though served for more than 240 days his service being terminated without notice and retrenchment compensation as provided under Section 25F of the Industrial Dispute Act the reference be allowed directing the second party to reinstate him with backwages.

7. On appreciation of the pleadings, oral and documentary evidence placed on record by the parties in the light of the arguments addressed by the learned advocates I have arrived at the conclusion the first party having failed to prove that he was appointed on 10.12.1996 as Packer in clear vacant vacancy at Savanur Sub-Post Office and being terminated from the said post w.e.f. 1.08.2002 and thereby the reference is liable to be rejected for the following reasons:

REASONS

8. Though it has been categorically contended in the counter statement the appointment to the Grameena Dak Sevak the post to which the first party claims is governed by the Grameena Dak Sevak (Conduct and Employment) Rules, 2001 and any appointment to such posts are through recruitment rules by notification calling for application for appointment and since only one post exists at its Savanur post and from 10.09.1981 one A.M Joshi being appointed he has been serving, the first party who claims to have been appointed as packer in clear vacancy at sub post office, Savanur on consolidated wage of Rs. 2700 failed to produce any document either in respect of his appointment or being paid that consolidated wage of Rs. 2700. Thereby the claim of the second party is that under Grameena Dak Sevak Rules the regular appointee will have to apply leave by providing his own substitute under his own responsibility for the work during his leave period and first party might have been engaged by regular appointee during his absence as substitute and in that regard the certificate produced by him at Ex. W1 might have issued by the then post master, Savanur as such the same cannot be relied upon to believe the case of the first party that he was appointed as Packer in clear vacancy at Sub-Post Office, Savanur on 10.12.1996 on consolidated wages of Rs.2700 and in that capacity he continuously worked for 5 years 7 months till 30.07.2002 appears to be more probable and acceptable. Under the circumstances when the first party failed to substantiate that he was appointed to the post of Packer in a clear vacancy at Sub-Post Office, Savanur w.e.f.10.12.1996 and in that capacity worked upto 30.07.2002 on consolidated was of Rs. 2700 p.m. his claim/allegation that abruptly on 1.08.2002 to his surprise he was refused work by the sub postmaster appears to be his imagination and his claim falls to the ground. Under the circumstances he failed to establish he having worked continuously for more than 240 days in the sub post office at Savanur giving him a right under Section 25F of the Industrial Dispute Act for one month notice or wages in lieu of the notice or 15 days wages per year for the years of service he allegedly rendered. Accordingly I arrived at the conclusion the first party having miserably failed being appointed as a Packer at Sub Post Office, Savanur w.e.f. 10.12.1996 and in that capacity he served till 30.07.2002 his claim that his services came to be terminated abruptly w.e.f. 1.08.2002 without any reason is his imagination as such he is not entitle for any reliefs asked for. In the result I passed the following Award.

AWARD

The reference is rejected holding that the first party has failed to prove being appointed as a Packer at the Sub Post Office, Department of Posts, Savanur on 10.12.1996 and having worked in that capacity till

30.07.2002 and has been abruptly refused work w.e.f. 1.08.2002 and that he is not entitle for any relief.

(Dictated to PA transcribed by her corrected and signed by me on 18.09.2012)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर टेलीकाम, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/43/2001 को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2012 को प्राप्त हुआ था।

[सं. एल-40012/464/2000-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3370.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/43/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the General Manager, Telecom, Bhopal and their workman, which was received by the Central Government on 12.10.2012.

[No. L-40012/464/2000-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/43/2001

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Shyam Kumar Mehta,
C/o Mehta Studio, Nepaniakatan,
The Ashta,
Sehore (MP) ...Workman

Versus

The General Manager,
Telecom, CTO Building,
T.T. Nagar,
Bhopal (MP) ...Management

AWARD

Passed on this 21st day of September, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-40012/464/2000-IR(DU) dated 18.1.2001 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of GMT/DET in terminating the services of Shri Shyam Kumar Mehta w.e.f. 13-8-99 is justified? If not, to what relief the workman is entitled?"

2. The case of the workman Shri Shyam Kumar Mehta, in short, is that he was appointed as Telephone Attendant on 1.5.1998 by the management. He worked continuously till 13-8-99 when his services were terminated orally without notice and without payment of any compensation. It is stated that he worked 240 days in a calendar year. His termination is illegal in accordance with the provision of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement. The case of the management, *inter alia* is that the alleged workman was never engaged by the management. He had never worked as such the question of completing 240 days or more of his work doesnot arise. It is stated that there is no question of the violation of the provision of the Act, 1947. It is submitted that claim of the alleged workman be rejected.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication :—

I. Whether there is any relationship of employer and employee between the management and the alleged workman?

II. If so, whether the action of the management in terminating the services of the workman w.e.f. 13-8-94 is justified?

III. To what relief the workman is entitled?

5. The workman appeared in the case and filed statement of claim. Thereafter he became absent. Lastly his case is proceeded exparte against him on 25-8-2011.

6. **Issue Nos I & II**

Both the issues are taken up together for the sake of convenience. The management has examined one witness namely Shri S.M. Garg in support of his case. Shri Garg is working as Divisional Engineer (legal) in the office of GMT(D) Bhopal. He has stated that the workman was never engaged by the management. He has stated that the claim of the workman deserves to be dismissed. His evidence is unrebutted. There is nothing on the record to show that the alleged workman was ever engaged by the management. There is no reason to disbelieve the evidence of the management. This clearly shows that the claim of the alleged workman is not justified. These issues are decided against the workman and in favour of the management.

7. **Issue No. III**

On the basis of the discussion made above, it is clear that the alleged workman has no case. He is not entitled to any relief. The reference is accordingly answered.

8. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3371.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब डिवीजिनल आफीसर, टेलीग्राफ्स, मन्दसौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (सदंर्भ संख्या सी.जी.आई.टी./एस.सी./आर./182/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-10-2012 को प्राप्त हुआ था।

[सं. एल-40012/77/1992-आई.आर. (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3371.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/182/93) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Sub Divisional Officer, Telegraphs, Mandsour and their workman, which was received by the Central Government on 3-10-2012.

[No. L-40012/77/1992-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/182/93

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Devilal
S/o Shri Ramlalji,
Gram & Post Pipaliya Panth,
Distt. Mandsour ...Workman

Versus

Sub Divisional Officers (Telegraphs),
Mandsour ...Management

AWARD

Passed on this 7th day of September, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-40012/77/92-IR(DU) dt. 9-9-93 has referred the following dispute for adjudication by this tribunal:—

> "Whether the action of the Sub-divisional officer (Telegraphs), Mandsour in terminating the services of Shri Devilal S/o Shri Ramlalji, Casual Mazdoor w.e.f. 1-6-90 is justified? If not, what relief he is entitled to and from what date ?"

2. The case of the workman, in short, is that Shri Devilal was engaged on muster roll from 7-3-85 to31-5-90 by the management. It is stated that in between the above period, the management had illegally stopped him from work during the period from April 1985 to October 1986, April 1988 to Nov.1988, 1st Feb. 1990 to 17 Feb. 1990 and 1st April 1990 to 6th April 1990. He was terminated from service w.e.f. 1-6-90 orally without any notice and without payment of compensation in violation of the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that a scheme of the Telecommunication department was introduced on 1-10-89 whereby the casual labour was to be terminated in accordance with the Act, 1947. The workman is unemployed after termination from service. It is submitted that the workman be reinstated with back wages.

3. The management appeared and contested the reference by filing Written Statement. The case of the management, interalia, is that the workman was appointed as casual labour in the year 1985 on exigencies. He had not worked continuously during any period of time and infact between April 1985 to October 1986 he was continuously absent. He was on daily wages and was not a regular employee. His termination is not a retrenchment. However he was given notice and was offered compensation as per record. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication:

I. Whether the action of the management in terminating the services of Shri Devilal Casual Mazdoor w.e.f. 1-6-90 is justified?

II. To what relief the workman is entitled?

5. Issue No. I

The workman Shri Devilal is examined to prove his case. He has stated that he worked from 7-3-85 to 31-5-90 and he was terminated w.e.f. 1-6-90. He has stated that he had worked more than 300 days in twelve months preceding the date of termination. He has stated that he was not paid one month wages in lieu of notice nor paid any compensation as has provided in Section 25-F of the Act, 1947. He has stated at para-10 that SDO Shri Surender Singh Pawar gave certificates and he had worked as per certificates. The certificates are marked as Exhibit W/12 and W/12(a).

6. The Exhibit W/12 shows that he worked till December 1989 with broken period. Exhibit W/12(a) shows that he worked from November 86 to March 88 for 275 days. These two documents show that he had not worked till May 1990 as has been pleaded. It is clear from the certificate that from June 1989 to May 1990 i.e. in twelve calendar months he

had worked only 228 days. This shows that twelve months preceding the date of alleged termination, he had not worked 240 days to attract the provision of Section 25 B of the Act. His service is not to be counted as continuous service for a period of one year under Section 25 B(2) of the Act, 1947. Therefore the provision of Section 25-F of the Act 1947 appears to be not violated. Exhibit W/5 is a notice to the workman given by the management. This letter shows that he was absent for six months and was directed to receive one month pay in lieu of notice. This shows that the Manager gave notice and offered one month pay in lieu of notice. Exhibit W /1 is the application filed by the workman before the Asstt. Labour Commissioner (Central)Bhopal raising industrial dispute. Exhibit W/2 is another application of the workman filed before the Labour Enforcement Officer(C), Indore. Exhibit W/3 is the certificate of work done in March, 1985 for 17 days. Exhibit W/6 is the scheme of casual labour for regularization in the service. Exhibit W/7 is the legal notice given to the management. Exhibit W/8 and W/9 are the postal receipts. Exhibit W/10 and W/11 are acknowledgement receipts. Thus the oral and documentary evidence of the workman shows that there is no violation of the provision of the Act, 1947 in terminating his service by the management.

7. On the other hand, the management has also adduced evidence in the case. The management witness Shri R.C.Raikwar is working as Sub Divisional Officer, Telegraph, Mandsour. He has stated that the workman was engaged in the year 1985 as casual labour on exigencies. There is nothing in his evidence to disbelieve him. His evidence does not prove that he worked 240 days in twelve calendar months preceding the date of termination. This issue is decided against the workman and in favour of the management.

8. Issue No. II

On the basis of the discussion made above, it is clear that the action of the management in terminating his service is justified. The workman is not entitled to any relief. The reference is accordingly, answered.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3372.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डारेक्टर जनरल, नेशनल म्यूजियम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 60/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-10-2012 को प्राप्त हुआ था।

[सं. एल- 42012/131/2011-आईआर (डीयू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3372.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2012) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the Director General, National Museum and their workman which was received by the Central Government on 3-10-2012.

[No. L-42012/131/2011-IR(DU)]
SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I. D. No. 60/2012

Shri Sant Ram
S/o Shri Jhumman Lal, Jhuggi No.1603,
A Block, Vasant Vihar, New Delhi. .....Claimant

Versus

The Director General, National Museum,
Janpath, New Delhi-110011. ....Management

AWARD

National Museum (hereinafter referred to as the museum) engaged a safai karamchari on daily wage basis for a period of three months with effect from 29-05-03. His engagement was again extended for a period of three months with effect from 19-9-2003 and thereafter extended for next three months on 19-12-2003. Ultimately he was appointed as safaiwala with effect from 15-04-04, on ad hoc basis until further orders. His services were not regularized. Feeling aggrieved, he filed an application before the Central Administrative Tribunal (in short the CAT) being O.A. No.490 of 2005, wherein he prayed that the museum may be directed to treat his appointment as regular in terms of OM dated 26-10-1984 and 07-06-1988, issued by Department of Personnel and Training, Govt. of India, New Delhi. Application moved by him was disposed off by the CAT vide order dated 28-09-2005, since the museum made submission that his case would be considered for regularization subject to fulfilling criteria of requisite number of days, as mentioned in the scheme. Since the museum could not pass orders, hence he approached the CAT again by way of miscellaneous application, which was disposed off vide order dated 03-05-2006 with the directions to the museum to pass speaking orders, within a period of two months. On 18-07-2006, museum passed a speaking order,

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thereby rejecting claim for regularization of his services. He again approached the CAT by way of OA No.1519 of 2006 seeking relief of regularization of his services, which petition was dismissed by the CAT vide order dated 22-02-2007. A writ petition was preferred before the High Court of Delhi, challenging order passed by the CAT, which petition was also dismissed vide order dated 11-11-2009. He again approached the High Court of Delhi by way of Civil Miscellaneous Application being CM No.15904/2009, praying therein that the museum may be directed to fill up sanctioned vacant posts and due weightage may be given to him for the past services rendered, while considering his case for appointment against those sanctioned posts. During pendency of the said matter before the High Court of Delhi, the museum dispensed with his services vide order dated 05-05-2010. Aggrieved by the said order, he raised a demand for reinstatement in service, which was not conceded to. Ultimately, an industrial dispute was raised before the Conciliation Officer. Since the museum contested the claim, conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/131/2011-IR(DU), New Delhi dated 23-02-2012, with the following terms:

> "Whether action of the management of National Museum, New Delhi in terminating services of the workman Shri Sant Ram with effect from 05-05-2010 is legal and just? To what relief the workman is entitled to?"

2. Claim statement was filed by the safaiwala, namely, Shri Sant Ram, pleading therein that he was engaged by the museum as an adhoc employee against regular sanctioned post. He served the museum for more than 12 years without any break in services. He projects that initially his services were outsourced by the museum through a contractor. Thereafter, he was engaged on daily wage basis with effect from 29-05-2003. His engagement was further extended on 19-09-2003 and thereafter extended 19-12-2003 for a period of three months. He was appointed against a vacant post of safaiwala vide order dated 29-04-2004. His appointment was extended from time to time, but without any break in services. His services were liable to be regularized in terms of OM dated 26-10-1984 and 07-06-1988 issued by the Department of Personnel and Training, Govt. of India, New Delhi. When his services were not regularized, he approached the CAT by way of OA No.490/2005 praying therein that directions be issued to the museum to treat him as a regular employee. His petition was disposed off by the CAT vide order dated 28-09-2005, when the museum made submission that steps for regularization of his services would be taken subject to his fulfilling service for required number of days as mentioned in the scheme for regularization. However, museum had not taken any steps for regularization of his services for a period more than six months. Constrained by those events, he approached the CAT again by way of MA No.299 of 2006, on which application the CAT directed the museum to pass a speaking order, within a period of two months.

3. The museum passed speaking order on 18-07-2006, rejecting his claim for regularization of services. The museum had not taken into consideration that he had rendered more than 12 years service. He again approached the CAT by way of O.A. No.1519 of 2006 wherein miscellaneous application No.1247 of 2006 was moved. His petition was dismissed by the CAT vide order dated 22-02-2007, which was assailed by him before the High Court of Delhi by way of a writ petition. However, his writ petition was also dismissed vide order dated 11-11-2009, pleads the claimant. After disposal of his writ petition, two vacancies of safaiwala fall vacant. Though in-house training was given to the claimant by the museum and thereafter he was given his wages in the scale of Rs.5200-20200 with grade pay of Rs.1800 with effect from 01-01-2006, yet his services were not regularized. He approached High Court of Delhi by way of CM No.15904 of 2009 seeking directions for regularization of his services as one time measure, in compliance of the orders of the Apex Court handed down in Uma Devi [2006 (4) Scale 197]. During pendancy of application before the High Court of Delhi, the museum terminated his services vide order dated 05-05-2010. The order impugned is illegal and violative of the provisions of the Industrial Disputes Act, 1947 (in short the Act). The museum had contravened provisions of Section 25F and 25G of the Act. He made a representation dated 28-05-2010, but to no avail. His petition was disposed of by the High Court, vide order dated 09-09-2010 with liberty to him to approach the appropriate forum. He projects that the order dated 05-05-2010 is illegal and arbitrary, hence he may be regularized in the service of the museum with continuity and full back wages.

4. Claim was demurred by the museum pleading that this Tribunal does not have jurisdiction to entertain the dispute, since the claimant is governed by rules applicable to civil servants and have a right of redressal before the CAT, under the Administrative Tribunal Act, 1985. The claimant approached the CAT vide OA No.1519 of 2006, which was dismissed, vide order dated 22-02-2007. He challenged the said order before the High Court of Delhi by way of writ petition No.CWP 1657 of 2007, which was dismissed by the High Court of Delhi in 2009. Issue raised by the claimant has attained finality. He is estopped to raise that issue again. Order dated 5-5-2010 was also assailed by the claimant before the CAT by way of OA No.1923 of 2010, which was dismissed vide order dated 02-07-2010. The said order operates as resjudicata.

5. The museum claims that it is not an industry, hence provisions of the Act cannot be invoked. It has further been projected that the claimant was engaged by a corrupt officer, who is facing CBI enquiry in the matter, after lodging

case against him. Claimant was engaged dehors the rules. Hence, his services were dispensed with. He is not entitled to relief of reinstatement. The claim put forward by the claimant may be discarded, pleads the museum.

6. In view of the pleadings of the parties, following issues were settled:

(i) Whether the management is not an industry within the meaning of clause 2(j) of the Industrial Disputes Act, 1947?

(ii) Whether order dated 02-07-2010 passed by the CAT operates as resjudicata?

(iii) As in terms of reference.

7. On 18.09.2012, none appeared on behalf of the museum. Case was called several times at different intervals, but neither the authorized representative nor any officer of the museum appeared. At about 3 p.m., the matter was proceeded under Rule 22 of Industrial Disputes (Central) Rules, 1957. Claimant tendered his affidavit as evidence, besides documents and closed his evidence. Evidence of the museum was also closed.

8. Arguments were heard at the bar. Shri Shantanu Bhardwaj, authorized representative, advanced arguments on behalf of the claimant. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records.

Issue No.1

9. In its written statement, the museum projects that is not an industry, hence provisions of the Act are not applicable to it. However, museum opted not to adduce any evidence to substantiate its claim. Since the objection raised by the museum relates to legal proposition, hence I am constrained to proceed for its adjudication. For an answer to the proposition, it is expedient to construe the definition of the term "industry", as enacted by the Act. For the sake of convenience, said definition is extracted thus:

> "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

10. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

11. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve, There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by impirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab.I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

> "1. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.
>
> (a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.
>
> (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
>
> (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
>
> (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1 (supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures, "analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1 (supra), cannot be exempted from the scope of section 2(j),

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by govt. or statutory bodies.

(c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S 2(j)

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the at categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors' case (AAIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi university(AIR 1963 S.C.1873), Dhanraj Giriji Hospital (AIR 1975 SC2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

12. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The museum agitates that it is not an Industry. The view point held by the museum is that no profit motive activities are being carried on by it. No business is being run, hence the museum cannot be termed as an 'industry". Except the facts referred above, the museum nowhere projects any other factors to lay emphasis on the fact that it is not an

'industry'. Contra to it the claimant agitates that the museum is an 'industry'.

13. Applying the above test, it would be ascertained as to whether the museum falls within the ambit of industry, defined by the Act. The museum had not projected any fact relating to its activities. On the other hand, Shri Bhardwaj presents that it performs its activities in a systematic manner and renders material services to the community at large. For rendering such services, the museum is involved in co-operation between the employer and the employee for rendering those services to the community at large. Lack of business and proper motivation or capital investment would not take it out from the sweep of industry. Admittedly, the museum carries on its activities in a systematic manner. It renders services to the community at large and thus satisfies material human needs. To render such services, there is co-operation between the authorities of the museum and its employees. Therefore, mere non-existence of profit motive will not put the museum out of the pale of industry. It satisfies all tests and as such it is concluded that the museum is an industry within the meaning of definition given by the Act. The issue is therefore answered in favour of the claimant and against the museum.

Issue No. 2

14. In his affidavit dated 09-09-2012, tendered as evidence, the claimant details that when his services were not regularized in terms of OM dated 26-10-84 and 07-06-88 issued by the Department of Personnel and Training, Govt. of India, New Delhi, he approached the CAT for indulgence by way of OA No. 490 of 2005 praying therein that the museum may be directed to treat him as a regular employee. His application was disposed of vide order dated 28-09-2005, since a statement was made on behalf of the museum to the effect that it was willing to consider his case for regularization subject to fulfilling criteria of requisite number of days of service, as mentioned in the scheme for regularization. When his case was not considered for more than six months, he moved an application being MA No.299 of 2006, which application was disposed of by the CAT vide order dated 03-05-2006, with directions to the musuem to pass speaking order relating to regularization of his services, within a period of two months. The museum passed a speaking order on 18-07-2006, rejecting his claim for regularization. Though he rendered more than 12 years service, yet his case was not considered in accordance with the directions given by the Apex Court in Uma Devi (supra). Hence, he approached the CAT again by way of OA No.1519 of 2006 wherein application being MA No.1247 of 2006 was moved. However, his petition was dismissed by the CAT vide order dated 22-02-2007. He projects that order of the CAT was assailed by him before High Court of Delhi by way of writ petition, which was also dismissed vide order 11-11-2009.

15. Question for consideration comes as to whether order dated 22-02-2007 passed by the CAT operates as res-judicata? As detailed above, High Court did not find any error or arbitrariness in the order dated 22-02-2007 on the strength of which his petition was dismissed by the CAT. Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order passed by the High Court operates as res-judicata. Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to re-open it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Chosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter -whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

16. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under Section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

17. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are

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of three kinds : (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970(1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

18. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either -(C) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

19. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contact, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under Section 10 of the Act.

20. The CAT was created by the Administrative Tribunal Act, 1985. It has exclusive jurisdiction to adjudicate disputes relating to service matters. However, provisions of Section 28 of the said Act saves jurisdiction of the Apex Court as well as this Tribunal in the matters which lies within the purview of the Act.Therefore, it is apparent that the CAT as well as this Tribunal are having concurrent jurisdiction in respect of matters which fall within the purview of the Act and relates to recruitment and matters concerning recruitment to any services or post, relating to an employee who happens to be a workman within the definition of section 2(s) of the Act.

21. Now it would be to ascertained as to whether order dated 22-02-2007 operates as res-judicata. For an answer, this Tribunal is supposed to appreciate the issues adjudicated by the CAT. Unfortunately, neither the claimant nor the museum had placed the said order before this Tribunal for consideration. However, in the claim statement as well as in the affidavit dated 09-08-2012, the claimant projects that when issue relating to regularization of services was not answered in his favour through speaking order dated 18-07-2006, he approached the CAT again by way of OA No.1519 of 2006, which was dismissed by the CAT, placing reliance on the decision handed down by the Apex court in Uma Devi case (supra). Therefore, it is evident that order dated 22-02-2007 relates to claim or regularization of services of the claimant. It nowhere details the issue of illegal termination of services of the claimant. Therefore, the said order cannot operate as res-judicata.

22. In its written statement, the museum pleaded that order dated 05-05-2010 was challenged by the claimant before the CAT by way of O.A. No. 1923 of 2010, which was dismissed vide order dated 02-07-2010. Unfortunately, copy of the said order has not been placed before this Tribunal, either by the museum or the claimant. In his claim statement, as well as affidavit dated 09-08-2012, tendered as evidence, the claimant nowhere makes any reference to the effect that he challenged the order dated 5-5-2010 before CAT. This Tribunal is left in the lurch of that point. To claim protection under the doctrine of res judicata, it was for the museum to prove that order. When order dated 2-7-2010, passed by the CAT, has not been placed before the Tribunal, under these circumstances, this Tribunal cannot comment on the issues raised before the CAT and its adjudication. Resultantly, it could be said that the museum had not been able to establish that the present matter is barred by res judicata. Issue is accordingly answered.

Issue No. 3

23. As detailed by the claimant in his affidavit, he was engaged as a daily wager for a period of 3 months with effect from 29-05-2003, his engagement was further extended for a period of three months with effect from 19-12-2003 and extended again for a period of three months. He was appointed as safaiwala in adhoc capacity with effect from 15-04-2004 vide order dated 29-04-2004. Order dated 18-07-2006 has been relied by the claimant. When this document is perused, it came to light that at the time of his ad-hoc engagement as safaiwala, recruitment rules were not followed. Evidently, it is emerging over the record that

the claimant was engaged as safaiwala in ad-hoc capacity, dehors the recruitment rules. Termination order dated 05-05-2010 also reaffirms that very fact. Resultantly it is concluded that the claimant was engaged by the museum in violation of the recruitment rules, as a back door entrant.

24. As projected by the claimant, he rendered continuous service with the museum till 05-05-2010. His engagement as safailwala in ad-hoc capacity with effect from 15-04-2004 is also not a disputed fact. Therefore, it is evident that the claimant rendered continuous service for more than 240 days in a calendar year or preceding 12 months from the date of his termination.

25. Question for consideration comes as to whether termination of his service amounts to retrenchment? For an answer, definition of the term, as contained in Section 2(oo) of the Act is to be considered. Definition of the term 'retrenchment' is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health":

26. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363]".

27. It is not the case of the museum that services of the claimant were dispensed with by way of punishment in a disciplinary matter. No case of voluntary retirement or retirement on reaching the age of superannuation has been projected. It is also not claimed that services of the claimant were dispensed with on account of non renewal of contract of employment between him and the museum or his services were done away under stipulation contained in that behalf in terms of his employment. No whisper of fact was made that services of the claimant were done away on account of his continued ill health. Thus, the case of the claimant does not fall within the exceptions provided in the definition. It is apparent that termination of the services of the claimant amounts to retrenchment.

28. The claimant rendered continuous service for more than 6 years as contemplated by Section 258 of the Act. It is not disputed that his services were done away on 05-05-2010. As order dated 05-05-2010 highlights, no retrenchment compensation was paid to him. The musuem was under an obligation to pay retrenchment compensation to the claimant at the time of termination of his services, as provide by Section 25-F of the Act. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Reliance can be placed on precedents in Bombay Union of Journalists case [1964 (1) LLJ 351], Adaishwar Laal (1970 Lab.I.C.936) and B.M.Gupta [1979 (1) LLJ 168], wherein it has been held that subsequent payment of compensation cannot validate an invalid order of ,retrenchment. Obviously, retrenchment of the claimant is violative of the provisions of Section 25-F of the Act.

29. Services of the workman were retrenched without payment of retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

30. In Uma Devi (supra) the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus :

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent-the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

31. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (Supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment cannot be relaxed and court cannot direct regularizatien of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

32. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being : temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

33. In view of facts detailed above, it is concluded that the claimant was engaged by the museum dehors the recruitment rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the museum. In the alternative, this Tribunal has to award compensation to the claimant in lieu of his reinstatement. No definite yardstick for measuring the quantum of compensation is available. In S.S.Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future.... .In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have, to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is Possible bearing, of Course in mind all the relevant factors pro and con".

35. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and

the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

36. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by , the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty [1962 (II) LLJ 483] the Court converted the award of l reinstatement into compensation of a sum of Rs.50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P.Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K.Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs.75000 in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs.2lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs.65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

37. At the cost of repetition, it is pointed out that the claimant was engaged by the museum dehors the recruitment rules. The claimant rendered more than 6 years service to the museum. He reached the age of 40 years, at the time of termination of his service. According to him, he cannot get any other Government job. These facts are not dispelled by the museum. However it is apparent that on the date of his initial engagement, he was not eligible for Government job, being over age. He was not in a position to expect continuity in service. Taking into account all these aspects, I am of the view that compensation to the tune of Rs.1,00,000.00 would be adequate amount, in lieu of reinstatement in service. Accordingly, an award is passed to the effect that the museum shall pay a sum of Rs.1,00,000.00 to the claimant in lieu of his reinstatement in service. It be sent to the appropriate Government for publication.

Dated : 19-9-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2012

का.आ. 3373.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जरनल, नैशनल म्यूजियम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली के पंचाट (संदर्भ संख्या 59/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 03-10-2012 को प्राप्त हुआ था।

[सं. एल-42012/132/2011-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2012

S.O. 3373.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 59/2012) of the Central Government Industrial Tribunal Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial dispute between the Director General, National Museum and their workman, which was received by the Central Government on 03-10-2012.

[No. L-42012/132/2011-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOMA COURTS COMPLEX, DELHI

I. D. No. 59/2012

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Shri Amrender Kumar
S/o. Shri Narender Nath,
R/o. H.No. B-2/171 and H.No. B/162,
Pradhan Wali Gail No. 2 Johripur,
Shahdara, Delhi ...Claimant

Versus

The Director General,
National Museum,
Janpath,
New Delhi-110011. ...Management

AWARD

National Museum (hereinafter referred to as the museum) engaged a chowkidar on daily wage basis for a period of three months with effect from 19.09.03. His engagement was again extended for a period of three months with effect from 19.12.2003. Thereafter he was appointed as cleaner with effect from 15.04.04, on ad-hoc basis until further orders. His services were not regularized. Feeling aggrieved, he filed an application before the Central Administrative Tribunal (in short the CAT) being O.A. No. 332 of 2005, wherein he prayed that the museum may be directed to treat his appointment as regular in terms of OM dated 26.10.1984 and 07.06.1988, issued by Department of Personnel and Training, Govt. of India, New Delhi. Application moved by him was disposed of by the CAT vide order dated 28.02.2005, since the museum made submission that his case would be considered for regularization subject to fulfilling criteria of requisite number of days, as mentioned in the scheme. Since the museum could not pass orders, hence he approached the CAT again by way of miscellaneous application, which was disposed of vide order dated 03.05.2006 with the directions to the museum to pass speaking orders, within a period of two months. On 18.07.2006, museum passed a speaking order, thereby rejecting claim for regularization of his services. He again approached the CAT by way of OA No. 1519 of 2006 seeking relief of regularization of his services, which petition was dismissed by the CAT vide order dated 22.02.2007. A writ petition was preferred before the High Court of Delhi, challenging order passed by the CAT, which petition was also dismissed vide order dated 11.11.2009. He again approached the High Court of Delhi by way of Civil Miscellaneous Application being CM No. 15904/2009, praying therein that the museum may be directed to fill up sanctioned vacant posts and due weightage may be given to him for the past services rendered, while considering his case for appointment against those sanctioned posts. During pendency of the said matter before the High Court of Delhi, the museum dispensed with his services vide order dated 05.05.2010. Aggrieved by the said order, he raised a demand for reinstatement in service, which was not conceded to. Ultimately, an industrial dispute was raised before the Conciliation Officer. Since the museum contested the claim, conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42012/132/2011-IR(DU), New Delhi dated 23-02-2012, with the following terms :—

> "Whether action of the management of National Museum, New Delhi in terminating services of the workman Shri Amrender Singh with effect from 05.05.2010 is legal and just? To what relief the workman is entitled to?"

2. Claim statement was filed by the cleaner, namely, Shri Amrender Singh, pleading therein that he was engaged by the museum as an ad-hoc employee against regular sanctioned post. He served the museum for more than 12 years without any break in services. He projects that initially his services were outsourced by the museum through a contractor. Thereafter, he was engaged on daily wage basis with effect from 29-05-2003. His engagement was further extended on 19-09-2003 for a period of three months. He was appointed against a vacant post of cleaner vide order dated 29-04-2004. His appointment was extended from time to time, but without any break in services. His services were liable to be regularized in terms of OM dated 26-10-1984 and 07-06-1988 issued by the Department of Personnel and Training, Govt. of India, New Delhi. When his services were not regularized, he approached the CAT by way of OA No.332/2005 praying therein that directions be issued to the museum to treat him as a regular employee. His petition was disposed of by the CAT vide order dated 28-09-2005, when the museum made submission that steps for regularization of his services would be taken subject to his fulfilling service for required number of days as mentioned in the scheme for regularization. However, museum had not taken any steps for regularization of his services for a period more than six months. Constrained by those events, he approached the CAT again by way of MA No. 300 of 2006, on which application the CAT directed the museum to pass a speaking order, within a period of two months.

3. The museum passed speaking order on 18.07.2006, rejecting his claim for regularization of services. The museum had not taken into consideration that he had rendered more than 12 years service. He again approached the CAT by way of OA No.1519 of 2006 wherein miscellaneous application no.1247 of 2006 was moved. His petition was dismissed by the CAT vide order dated 22-02-2007, which was assailed by him before the High Court of Delhi by way of a writ petition. However, his writ petition was also dismissed vide order dated 11-11-2009, pleads the claimant. After disposal of his writ petition, two vacancies of cleaner fall vacant. Though in-house training was given to the claimant by the museum and thereafter he was given his wages in the scale of Rs. 5200-20200 with grade pay of Rs.1800 with effect from 01-01-2006, yet his services were not regularized. He approached High Court

of Delhi by way of CM No.15904 of 2009 seeking directions for regularization of his services as one time measure, in compliance of the orders of the Apex Court handed down in Uma Devi [2006 (4) Scale 197]. During pendancy of application before the High Court of Delhi, the museum terminated his services vide order dated 05.05.2010. The order impugned is illegal and violative of the provisions of the Industrial Disputes Act 1947 (In short the Act). The museum had contravened provisions of section 25F and 25G of the Act. He made a representation dated 28-05-2010, but to avail. His petition was disposed of by the High Court, vide order dated 09-09-2010 with liberty to him to approach the appropriate forum. He projects that the order dated 05-05-2010 is illegal and arbitrary, hence he may be regularized in the service of the museum with continuity and full back wages.

4. Claim was demurred by the museum pleading that this Tribunal does not have jurisdiction to entertain the dispute, since the claimant is governed by rules applicable to civil servants and have a right of redressal before the CAT, under the Administrative Tribunal Act, 1985. The claimant approached the CAT vide OA No.1519 of 2006, which was dismissed, vide order dated 22-02-2007. He challenged the said order before the High Court of Delhi by way of writ petition No.CWP 1657 of 2007, which was dismissed by the High Court of Delhi in 2009. Issue raised by the claimant has attained finality. He is estopped to raise that issue again. Order dated 5-5-2010 was also assailed by the claimant before the CAT by way of OA No.1923 of 2010, which was dismissed vide order dated 02-07-2010. The said order operates as resjudicata.

5. The museum claims that it is not an industry, hence provisions of the Act cannot be invoked. It has further been projected that the claimant was engaged by a corrupt officer, who is facing CBI enquiry in the matter, after lodging case against him. Claimant was engaged dehors the rules. Hence, his services were dispensed with. He is not entitled to relief of reinstatement. The claim put forward by the claimant may be discarded, pleads the museum.

6. In view of the pleadings of the parties, following issues were settled:

(i) Whether the management is not an industry within the meaning of clause 2(j) of the Industrial Disputes Act, 1947?

(ii) Whether order dated 02-07-2010 passed by the CAT operates as resjudicata?

(iii) As in terms of reference.

7. On 18-09-2012, none appeared on behalf of the museum. Case was called several times at different intervals, but neither the authorize representative nor any officer of the museum appeared. At about 3 p.m., the matter was proceeded under Rule 22 of Industrial Disputes (Central) Rule 1957. Claimant tendered his affidavit as evidence, besides documents and closeed his evidence. Evidence of the museum was also closed.

8. Arguments were heard at the bar Shri Shantanu Bhardwaj, authorized representative, advanced arguments on behalf of the claimant. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records.

Issue no. 1

9. In its written statement, the museum projects that is not an industry, hence provisions of the Act are not applicable to it. However, museum opted not to adduce any evidence to substantiate its claim. Since the objection raised by the museum relates to legal proposition, hence I am constrained to proceed for its adjudication. For an answer to the proposition, it is expedient to construe the definition of the term "industry", as enacted by the Act. For the sake of convenience, said definition is extracted thus:

> "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

10. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

11. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as

essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab.I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause(j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C. 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1 (supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures, "analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1 (supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted cateogry of professions, clubs, co-operatives and even gurukulas and little research labs may quality for exemption if in simple ventures substantively, and going by the dominant nature criterion substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the biding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, campassion, developmental passion or project.

IV. The dominant nature test :

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workman" as in the University of Delhi case (AIR 1963 S.C. 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C. 657) will

be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by govt. or statutory bodies.

(c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S. 2(j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the at categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C. 1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi university(AIR 1963 S.C. 1873), Dhanraj Giriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

12. Princples laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicatred in view of the law laid by the Apex Court in the precedent, referred above. The museum agitates that it is not an Industry. The view point held by the museum is that no profit motive activities are being carried on by it. No business is being run, hence the museum cannot be termed as an 'industry'. Except the facts referred above, the museum nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'. Contra to it the claimant agitates that the museum is an 'industry'.

13. Applying the above test, it would be ascertained as to whether the museum falls within the ambit of industry, defined by the Act. The museum had not projected any fact relating to its activities. On the other hand, Shri Bhardwaj presents that it performs its activities in a systematic manner and renders material services to the community at large. For rendering such services, the museum is involved in co-operation between the employer and the employee for rendering those services to the community at large. Lack of business and proper motivation or capital investment would not take it out from the sweep of industry. Admittedly, the museum carries on its activities in a systematic manner. It renders services to the community at large and thus satisfies material human needs. To render such services, there is co-operation between the authorities of the museum and its employees. Therefore, mere non-existence of profit motive will not put the museum out of the pale of industry. It satisfies all tests and as such it is concluded that the museum is an industry within the meaning of definition given by the Act. The issue is therefore answered in favour of the claimant and against the museum.

Issue No. 2

14. In his affidavit dated 09-09-2012, tendered as evidence, the claimant detail that when his services were not regularized in terms of OM dated 26-10-84 and 07-06-88 issued by the Department of Personnel and Training. Govt. of India, New Delhi, he approached the CAT for indulgence by way of OA No. 332 of 2005 praying therein that the museum may be directed to treat him as a regular employee. His application was disposed off vide order dated 28-09-2005, since a statement was made on behalf of the museum to the effect that it was willing to consider his case for regularization subject to fulfilling criteria of requisite number of days of service, as mentioned in the scheme for regularization. When his case was not considered for more than six months, he moved an application being MA No. 300 of 2006, which application was disposed off by the CAT vide order dated 03-05-2006, with directions to the musuem to pass speaking order relating to regularization of his services, within a period of two months. The museum passed a speaking order on 18-07-2006, rejecting his claim for regularization. Though he rendered more than 12 years service, yet his case was not considered in accordance with the directions given by the Apex Court in Uma Devi (supra). Hence, he approached the CAT again by way of OA No.1519 of 2006 wherein application being MA No. 1247 of 2006 was moved. However, his petition was dismissed by the CAT vide order dated 22-02-2007. He projects that order of the CAT was assailed by him before High Court of Delhi by way of writ petition, which was also dismissed vide order 11-11-2009.

15. Question for consideration comes as to whether order dated 22-02-2007 passed by the CAT operates as res-judicata? As detailed above, High Court did not find any error or arbitrariness in the order dated 22-02-2007 on the strength of which his petition was dismissed by the CAT. Whether the order, referred above, would preclude the claimant from re-agitating that very issue? For an answer it would be considered as to whether the order passed by the High Court operates as res-judicata. Section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Chosal Vs. Deorajin Debi (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need

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of giving a finality to judicial decision. What it says is that once a res-judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law- has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit of proceedings between the same parties to convass the matter again".

16. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under Section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

17. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issue are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad Vs. Dossibai [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

18. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either—(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

19. For articulation of an industrial dispute, the labour court or an industrial tribunal exercise adjudicatory jurisdiction. Task of an industrial adjudicator is tedious, who has to reconcile the head-on clash between the fundamental rights guaranteed by the constitution such as freedom of trade, freedom to practice any profession or to carry on any occupation and the directive principles enshrined in the constitution which are fundamental in the governance of the country. He has also the delicate task of balancing the conflicting interest of employer, employee and the public on very basic policies, such as, freedom and sanctity of contact, protection of business, right to work, making training available to employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity. betterment of one's status, avoidance of one's becoming a public charge, encouragement of competition and development of national and international trade and avoidance of monopoly, promotion of collective bargaining and elimination of indiscipline in industry and so on. Questions on above issues are to be adjudicated by an industrial adjudicator. Though the constitution has vested powers of judicial review in High Courts and invested it with power to sit in appeal over the awards of industrial tribunals, yet industrial tribunals are courts of exclusive jurisdiction on the matters, which are referred to them by the appropriate Government under Section 10 of the Act.

20. The CAT was created by the Administrative Tribunal Act, 1985. It has exclusive jurisdiction to adjudicate disputes relating to service matters. However, provisions of Section 28 of the said Act saves jurisdiction of the Apex Court as well as this Tribunal in the matters which lies within the purview of the Act. Therefore, it is apparent that the CAT as well as this Tribunal are having concurrent jurisdiction in respect of matters which fall within the purview of the Act and relates to recruitment and matters concerning recruitment to any services or post, relating to an employee who happens to be a workman within the definition of Section 2(s) of the Act.

21. Now it would be to ascertained as to whether order dated 22.02.2007 operates as res-judicata. For an answer, this Tribunal is supposed to appreciate the issues adjudicated by the CAT. Unfortunately, neither the claimant nor the museum had placed the said order before this Tribunal for consideration. However, in the claim statement as well as in the affidavit dated 09.08.2012, the claimant projects that when issue relating to regularization of services was not answered in his favour through speaking order dated 18.07.2006, he approached the CAT again by way of OA No.1519 of 2006, which was dismissed by the CAT, placing reliance on the decision handed down by the

Apex Court in Uma Devi case (supra). Therefore, it is evident that order dated 22.02.2007 relates to claim of regularization of services of the claimant. It nowhere details the issue of illegal termination of services of the claimant. Therefore, the said order cannot operate as res-judicata.

22. In its written statement, the museum pleaded that order dated 05.05.2010 was challenged by the claimant before the CAT by way of O.A.No.1923 of 2010, which was dismissed vide order dated 02.07.2010. Unfortunately, copy of the said order has not been placed before this Tribunal, either by the museum or the claimant. In his claim statement, as well as affidavit dated 09.08.2012, tendered as evidence, the claimant nowhere makes any reference to the effect that he challenged the order dated 5.5.2010 before CAT. This Tribunal is left in the lurch on that point. To claim protection under the doctrine of res-judicata, it was for the museum to prove that order. When order dated 2.7.2010, passed by the CAT, has not been placed before the Tribunal, under these circumstances, this Tribunal cannot comment on the issues raised before the CAT and its adjudication. Resultantly, it could be said that the museum had not been able to establish that the present matter is barred by res-judicata. Issue is accordingly answered.

Issue No. 3

23. As detailed by the claimant in his affidavit, he was engaged as a daily wager for a period of 3 months with effect from 19.09.2003. His engagement was further extended for a period of three months with effect from 19-12-2003. He was appointed as cleaner in ad hoc capacity with effect from 15.04.2004 vide order dated 29-04-2004. Order dated 18-07-2006 has been relied by the claimant. When this document is perused, it came to light that at the time of his ad hoc engagement as cleaner, recruitment rules were not followed. Evidently, it is emerging over the record that the claimant was engaged as cleaner in ad hoc capacity, dehors the recruitment rules. Termination order dated 05-05-2010 also reaffirms that very fact. Resultantly it is concluded that the claimant was engaged by the museum in violation of the recruitment rules, as a back door entrant.

24. As projected by the claimant, he rendered continuous service with the museum till 05-05-2010. His engagement as cleaner in ad hoc capacity with effect from 15-04-2004 is also not a disputed fact. Therefore, it is evident that the claimant rendered continuous service for more than 240 days in a calendar year or preceding 12 months from the date of his termination.

25. Question for consideration comes as to whether termination of his service amounts to retrenchment. For an answer, definition of the term, as contained in Section 2(oo) of the Act is to be considered. Definition of the term "retrenchment" is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

26. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363]".

27. It is not the case of the museum that services of the claimant were dispensed with by way of punishment in a disciplinary matter. No case of voluntary retirement or retirement on reaching the age of superannuation has been projected. It is also not claimed that services of the claimant were dispensed with on account of non renewal of contract of employment between him and the museum or his services were done away under stipulation contained in that behalf in terms of his employment. No whisper of fact was made that services of the claimant were done away on account of his continued ill health. Thus, the case of the claimant does not fall within the exceptions provided in the definition. It is apparent that termination of the services of the claimant amounts to retrenchment.

28. The claimant rendered continuous service for more than 6 years as contemplated by Section 25B of the Act. It is not disputed that his services were done away on

05-05-2010. As order dated 05-05-2010 highlights, no retrenchment compensation was paid to him. The museum was under an obligation to pay retrenchment compensation to the claimant at the time of termination of his services, as provide by Section 25F of the Act. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Reliance can be placed on precedents in Bombay Union of Journalists case [1964 (1) LLJ 351], Adaishwar Lal (1970 Lab. I.C. 936) and B.M.Gupta [1979 (1) LLJ 168], wherein it has been held that subsequent payment of compensation cannot validate an invalid order of retrenchment. Obviously, retrenchment of the claimant is violative of the provisions of Section 25F of the Act.

29. Services of the workman were retrenched without payment of retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

30. In Uma Devi (supra) the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

31. In P .Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (Supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs and Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court cannot direct regularization of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (Whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

32. In Uma Devi (supra) it was laid that "When a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or Contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

33. In view of facts detailed above, it is concluded that the claimant was engaged by the museum dehors the recruitment rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the museum. In the alternative, this Tribunal has to award compensation to the claimant in lieu of his reinstatement. No definite yardstick for measuring the quantum of compensation is available. In S.S. Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of

reinstatement, in the following words:

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

34. Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

35. A Divisional Bench of the Patna High Court in B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab I.C.1887).

36. In Assam Oil Co. Ltd. (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab. I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs.75000 in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C. 107) a compensation of Rs.65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V.Rao (1991 Lab.I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

37. At the cost of repetition, it is pointed out that the claimant was engaged by the museum dehors the recruitment rules. The claimant rendered more than 6 years services to the museum. He reached the age of 28 years, at the time of termination of his service. According to him, he has become overage and cannot get any other Government job. These facts are not dispelled by the museum. Taking into account all these aspects, I am of the view that compensation to the tune of Rs. 1,50,000.00 would be adequate amount in lieu of reinstatement in service. Accordingly, an award is passed to the effect that the museum shall pay a sum of Rs 1,50,000.00 to the claimant in lieu of this reinstatement in service. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated : 19-09-2012

नई दिल्ली, 16 अक्तूबर, 2012

का.आ. 3374.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओपिअम आफीसर, नारकोटिक्स डिपार्टमेंट, चित्तौड़गढ़ के प्रबंधतंत्र के संबद्ध नियोजकों

4073 GI/12-23

और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भीलवाड़ा के पंचाट (संदर्भ संख्या 2/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2012 को प्राप्त हुआ था।

[सं. एल-42012/24/2006-आई.आर. (डी.यू.)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 16th October, 2012

S.O. 3374.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2007) of the Central Government Industrial Tribunal cum Labour Court Bhilwara as shown in the Annexure, in the Industrial dispute between the Opium Officer, Narcotics Department, Chittorgarh and their workman, which was received by the Central Government on 12-10-2012.

[No. L-42012/24/2006-IR(DU)]
SURENDRA KUMAR, Section Officer

अनुबन्ध

श्रम न्यायालय, भीलवाड़ा, राजस्थान

पीठासीन अधिकारी - श्री रमेश चंद मीणा, आर.एच.जे.एस.
श्रम विवाद प्रकरण संख्या: 2/2007

श्री सुरेश कुमार जीनगर पुत्र श्री शंकर लाल,
जरिये : सेक्रेटरी, भा.म. संघ, चित्तौड़गढ़

--प्रार्थी/श्रमिक

बनाम

अफीम अधिकारी, नारकोटिक्स विभाग,
चित्तौड़गढ़।

--विपक्षी/नियोजकगण

उपस्थित

श्री बलदेव मोड, प्रतिनिधि - प्रार्थी की ओर से
श्री जे.एल. मीणा, प्रतिनिधि - विपक्षी की ओर से

दिनांक 14-9-2012

पंचाट

भारत सरकार के श्रम मंत्रालय ने अधिसूचना संख्या एल-42012/24/2006-आईआर-डीयू दिनांक 28-11-2006 के द्वारा निम्न विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया:-

Whether the action of the management of District Opium Officer, Narcotics Department, Bhilwara, in legal and justified? If not, to what relief the workman is entitled to?

उपरोक्तानुसार विवाद प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया तथा पक्षकारान को सूचित किया गया।

प्रार्थी की ओर से क्लेम प्रार्थना पत्र पेश कर जाहिर किया गया कि उसे विपक्षी नियोजक ने कम्प्यूटर ऑपरेटर/डाटा ऑपरेटर के पद पर दि. 1-1-2000 से नियोजित किया। तब से वह विपक्षी के यहां नियमित रूप से कार्यरत रहा। उसे वेतन केन्द्रीय कोष से आ किया जाता था। उसने विपक्षी के अधीन दि. 30-6-2004 तक प्रत्येक कलेंडर वर्ष में 240 दिनों से अधिक अवधि तक कार्य किया। इसके बावजूद उसे औ.वि. अधि. 1947, जिसे निर्णय में आगे अधिनियम 1947 से सम्बोधित किया जायेगा, कि धारा 25 के बंधनकारी प्रावधानों की अनुपालना में संवर्गवार सीनियरीटी लिस्ट प्रकाशन किये बिना अग्रिम वेतन दिये बिना, क्षतिपूर्ति राशि दिये बिना, कोई जांच कार्यवाही किये बिना मौखिक आदेश से सेवा से पृथक कर दिया, जो अवैध एवं अनुचित है। वह सेवा पृथक्करण के बाद से ही बेरोजगार है। प्रार्थी श्रमिक ने समस्त वेतन परिलाभों सहित पुनः पूर्व पद पर नियोजित करवाने की प्रार्थना की।

विपक्षी नियोजक की ओर से क्लेम प्रार्थना पत्र का जवाब पेश कर प्रारंभिक आपत्तियों के रूप में जाहिर किया गया कि विपक्षी विभाग उद्योग की श्रेणी में नहीं आता है। प्रार्थी भारतीय मजदूर संघ, चित्तौडगढ़ का सदस्य न होने की स्थिति में उक्त श्रमिक संघ को प्रार्थी का विवाद उठाने का अधिकार नहीं है। आगे जवाब में जाहिर किया गया कि प्रार्थी को दि. 1.1.2000 से उनके यहां किसी पद पर नियोजित नहीं किया गया। नियोजन के लिए विभाग में प्रक्रिया निर्धारित है तथा उसकी पालना पर ही किसी व्यक्ति को उस पद पर नियुक्त किया जाना संभव होता है। ऐसे किसी पद के लिए कभी कोई विज्ञापन नहीं निकाला गया, न ही परीक्षा एवं साक्षात्कार किया गया, न ही नियोजित किया गया। प्रार्थी ने उनके यहां 1-1-2000 से 30.6.2004 तक 3 वर्ष 6 माह तक प्रति वर्ष में 240 दिन से अधिक कार्य नहीं किया, न उसे दि. 1-7-2004 को मौखिक रूप से सेवा से पृथक किया गया। प्रार्थी ने आकस्मिक श्रमिक के रूप में जून 2001 से अप्रैल 05 तक काम किया है तथा उसने स्वेच्छा से उपस्थिति देना बंद कर दिया। उनके यहां कम्प्यूटर आपरेटर का कोई पद सृजित नहीं है। 'अतिरिक्त कथन' में जाहिर किया गया कि प्रार्थी ने जुलाई 03 से वर्ष 2004 में एक भी कार्य दिवस में कार्य सम्पादित नहीं किया, इस लिए दि. 30-6-2004 को कार्य पर उपस्थित होना असत्य है। प्रार्थी ने अप्रैल 05 में 11 दिन उपस्थिति दी है, इसलिए दि. 1-7-04 को सेवा पृथक करना गलत उल्लेखित किया गया है। प्रार्थी ने दि. 1-7-04 से एक वर्ष जुलाई 04 में कभी भी किसी भी दिन उपस्थिति नहीं दी। इस प्रकार प्रार्थी के 240 दिन कार्य दिवस नहीं होते हैं, इसलिए उसे अधिनियम 1947 के प्रावधानों का लाभ नहीं दिया जा सकता। प्रार्थी का क्लेम प्रार्थना पत्र निरस्त करने की प्रार्थना की गई।

प्रार्थी की ओर से साक्ष्य में स्वयं प्रार्थी सुरेश कुमार को परीक्षित करवाया गया। विपक्षी नियोजक की ओर से श्री जे.एल. मीणा को परीक्षित करवाया गया। दोनों पक्षों द्वारा सुसंगत प्रलेखीय साक्ष्य भी प्रस्तुत किया गया।

दोनों पक्षों की बहस अंतिम सुनी गई। प्रार्थी पक्ष ने लिखित बहस भी पेश की। पत्रावली का ध्यानपूर्वक अवलोकन किया गया।

प्रार्थी श्रमिक ने स्वयं को विपक्षी जिला अफीम अधिकारी के अधीन कम्प्यूटर डाटा ऑपरेटर के पद पर दि. 1-1-2000 से 30-6-04 तक

निरंतर एवं नियमित रूप से कार्यरत होने का अभिकथन करते हुए इस आधार पर उसे विपक्षी नियोजक द्वारा 1 जुलाई 04 को सेवा पृथक किये जाने को अधि. 1947 के प्रावधानों के अनुसार चुनौती प्रदान की है।

प्रार्थी श्रमिक द्वारा उपरोक्त वर्णित तथ्यों को विपक्षी नियोजक द्वारा स्वयं के प्रत्युत्तर में इस आधार पर अस्वीकार किया है कि उन्होंने प्रार्थी श्रमिक को स्वयं के अधीन कोई नियमित नियुक्ति प्रदान नहीं की थी, बल्कि उसे तो मात्र आकस्मिक रूप से दैनिक वेतनभोगी कर्मचारी की हैसियत से आवश्यकतानुसार काम पर रखा था। चूंकि प्रार्थी ने किसी भी वर्ष में 240 दिन या इससे अधिक समयावधि तक नियमित रूप से कार्य सम्पादन नहीं किया है। ऐसी अवस्था में प्रार्थी श्रमिक स्वयं के दावे के माध्यम से वांछित अनुतोष प्राप्ति का अधिकारी नहीं है। इन तथ्यों के अलावा उनके जवाब का अन्य आधार इस प्रकार भी है कि विपक्षी जिला अफीम अधिकारी, भीलवाड़ा केन्द्र सरकार का एक विभाग है, जिसके द्वारा किसी भी लाभ या हानि को लेकर कोई व्यवसाय नहीं किया जाता है। इस आधार पर विपक्षी नियोजक अधि. 1947 की धारा 2-जे के अनुसार उद्योग की परिधि में नहीं आता है। इस आधार पर भी प्रार्थी श्रमिक का दावा निरस्त किये जाने योग्य है।

प्रार्थी श्रमिक के नियोजन संबंधी दावे के अभिनिर्धारण के अनुक्रम में दोनों पक्षों द्वारा प्रस्तुत उपरोक्त वर्णित तथ्यों एवं विधिक आपत्तियों के मद्दे नजर सर्वप्रथम अभिनिर्धारित किये जाने वाला मुख्य विधिक बिन्दु यह है कि-

क्या विपक्षी नियोजक उद्योग की परिभाषा में आता है या नहीं?

इस विधिक आपत्ति के निस्तारण के अनुक्रम में अधि. 1947 की धारा 2-जे को अवलोकित किया जाये तो इन प्रावधानों में उद्योग को इस प्रकार परिभाषित किया है :—

"Industry" means any business, trade, undertaking manufacture or calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

उक्त परिभाषा के मद्दे नजर प्रार्थी श्रमिक के दावे की मद नं. 10 व प्रार्थी श्रमिक के शपथ पत्र की मद नं. 9 में उल्लेखित तथ्यों को देखा जाये तो उसके द्वारा यह प्रकट किया गया है कि विपक्षी नियोजक का मुख्य कार्य अफीम उत्पादन करने वाले काश्तकारों से तय शुदा कीमत पर अफीम को क्रय करके नीचम व गाजीपुर में स्थित उनके विभागीय कारखानों में प्रोसेसिंग करवाया जाकर उस अफीम का औषधीय प्रयोजनार्थ व्यवसायिक कार्य सम्पादित किया जाता है इस प्रकार विपक्षी नियोजक द्वारा प्रत्यक्ष रूप से अफीम का क्रय करके स्वयं की फैक्ट्री में प्रोसेसिंग करवाया जाकर उसका व्यवसायिक उपयोग करवाया जाता रहा है। प्रार्थी श्रमिक द्वारा प्रकट किये गये उपरोक्त वर्णित तथ्यों के खंडन स्वरूप प्रार्थी सुरेश कुमार से कोई सुसंगत प्रतिपरीक्षण विपक्षी प्रतिनिधि द्वारा करके यह तथ्य अभिलेख पर नहीं लाये गये हैं कि उनके विभाग द्वारा अफीम क्रय करके उसकी प्रोसेसिंग स्वयं द्वारा संचालित फैक्ट्रियों में करवा कर अफीम का व्यवसायिक उपयोग नहीं करवाया जा रहा है। यहां तक कि इसी बिन्दु के संबंध में विपक्षी गवाह जे.एल. मीणा, जिला अफीम अधिकारी से किये गये प्रतिपरीक्षण को अवलोकित किया जाकर देखा जाये तो उन्होंने यह स्वीकार किया है कि नीमच व गाजीपुर में स्थित विभागीय फैक्ट्री फैक्ट्री एक्ट के तहत संचालित है। विभाग द्वारा अफीम खेती हेतु जारी पट्टों से पैदा होने वाली अफीम को तय शुदा रेट पर एकत्रित किया जाकर उसे फैक्ट्री में प्रोसेसिंग हेतु भेजा जाता है। इस प्रकार विपक्षी नियोजक के गवाह ने भी स्वयं के कार्य की प्रकृति के संबंध में यह स्वीकार किया है कि उनका मुख्य कार्य अफीम उत्पादक किसानों को पट्टे जारी करके अपने अधीन अफीम उत्पादन करवाई जाती है, जिनको तय शुदा दर पर क्रय किया जाकर नीमच व गाजीपुर स्थित स्वयं की फैक्ट्री में प्रोसेसिंग करवा कर उसका वाणिज्यिक उपयोग करवाया जाता रहा है। केन्द्र सरकार के ऐसे विभाग द्वारा संचालित वाणिज्यिक क्रिया कलापों को अधि. 1947 की धारा 2-जे के अनुसार उद्योग की श्रेणी में ही माना जायेगा। जैसा कि इस विधिक बिन्दु के संबंध में मान. उच्चतम न्यायालय द्वारा ए आई आर 1978 एस.सी- पेज 548 बेंगलोर वाटर सप्लाई एंड सिवरेज बोर्ड बनाम राजप्पा वगैरह में अधि. 1947 की धारा 2-जे के अनुसार उद्योग की व्याख्या इस प्रकार की गई है कि-

(a) Where (i) systemic activity. (ii) Organized by co-operation between employer and employee the direct and substantist element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (Not spiritual or religious but inclusive of material things of services geared to celestial bliss *i.e.* making, on a large scale of prasad or food), prima facie, there is an "Industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus in functional and the decisive test in the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Alghough section 2(j) uses words of the widest amplitude in its two rimbs, their meaning cannot be magnified to over reach itself;

"Undertaking" must suffer a contextual and associational shrinkage as explained in Banerji and in his judgment, so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements in (supra) although, not trade or business, may still be "Industry" provided the nature of activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of "industry" undertakings, calling or services, adventure "analogous to the carrying on the trade or business" All features, other than the methodology

of carrying on the activity viz., in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy.

मान. उच्चतम न्यायालय द्वारा प्रदत्त उपरोक्त वर्णित वैधानिक व्यवस्था को ध्यान में रखते हुए इस मामले की वस्तु स्थिति को देखा जाये तो विपक्षी नियोजक अफीम उत्पादक काश्तकारों से तय शुदा दर पर अफीम क्रम करके उस अफीम का स्वयं द्वारा संचालित फेक्ट्री में प्रोसेसिंग करवा कर उसका वाणिज्यिक उपयोग करता है। इस प्रकार केन्द्र सरकार के इस विभाग की कार्य व प्रकृति व्यवसायिक एवं वाणिज्यिक है। इस आधार पर विपक्षी नियोजक उद्योग की श्रेणी में आता है। इसी विधिक बिन्दु के संबंध में मान. राज. उच्च न्यायालय की जयपुर बेंच द्वारा एस.बी. सिविल रिट पीटीशन नं. 4093/06 यूनियन आफ इंडिया जिला अफीम अधिकारी, सेन्ट्रल नारकोटिक्स ब्यूरो बनाम रामेश्वर लाल में आदेश पारित करते हुए प्रार्थी श्रमिक को वांछित अनुतोष प्रदान किया है । इस प्रकार विपक्षी नियोजक के द्वारा सम्पादित कार्य की प्रकृति के मद्देनजर अधि. 1947 की धारा 2-जे के अनुसार उसकी वैधानिक स्थिति को देखा जाये तो मेरे विनम्र मतानुसार विपक्षी जिला अफीम अधिकारी, भीलवाड़ा उद्योग की श्रेणी में आता है। इस विधिक स्थिति के आधार पर विपक्षी नियोजक द्वारा प्रस्तुत की गई वैधानिक आपत्ति स्वीकार किये जाने योग्य नहीं है।

प्रार्थी श्रमिक ने विपक्षी जिला अफीम अधिकारी, भीलवाड़ा के यहां दि. 1-1-2000 से 30-06-2004 तक कम्प्यूटर डाटा आपरेटर के पद पर निरंतर एवं नियमित रूप से तय शुदा वेतन पर कार्य किया है किन्तु उसे दि. 01-07-2004 को बिना नोटिस दिये, बिना विभागीय जांच किये व अधि. 1947 की धारा 25 के आज्ञापक प्रावधानों की अनुपालना किये बिना सेवा से पृथक कर दिया गया, जबकि विपक्षी ने श्रमिक के नियोजन संबंधी स्थिति बाबत यह प्रकट किया है कि वह उनके यहां आकस्मिक दैनिक वेतनभोगी की हैसियत से कार्यरत रहा है, जिसने कलेंडर वर्ष के दौरान 240 दिनों या इससे अधिक समयावधि तक कभी भी कोई कार्य नहीं किया। प्रार्थी श्रमिक के नियमित नियोजन की सिद्धी के अनुक्रम में दोनों पक्षों द्वारा प्रकट किये गये उक्त तथ्यों के अभिनिर्धारण के अनुक्रम में दोनों पक्षों द्वारा उपलब्ध करवाये गये मौखिक एवं दस्तावेजी साक्ष्य को अवलोकित किया जाकर देखा जाये तो विपक्षी नियोजक के गवाह जे.एल. मीणा, जिला अफीम अधिकारी ने स्वयं के शपथ पत्र की मद नं. एक में ही प्रार्थी श्रमिक द्वारा स्वयं के कार्यालय में जून 2001 से अप्रैल 05 तक किये गये कार्य का दिन प्रतिदिन का ब्यौरा प्रस्तुत किया है, जिसको अवलोकित किया जाकर देखा जाये तो प्रार्थी श्रमिक ने विपक्षी नियोजक के यहा जून 2001 से लेकर मई 02 तक पूर्ण होने वाले कलेंडर वर्ष में 293 दिन का निरंतर एवं नियमित कार्य सम्पादित किया है। इन तथ्यों को गवाह श्री जे.एल. मीणा ने अपने कथनों के प्रतिपरीक्षण में भी स्वीकार किया है। उक्त तथ्यों से हटकर विपक्षी नियोजक द्वारा ही प्रस्तुत उपस्थिति रजिस्टर प्रदर्श एम 1 लगायत एम 29 व भुगतान रसीद प्रदर्श एम 30 लगायत एम 48 के आधार पर प्रार्थी श्रमिक द्वारा विपक्षी नियोजक के अधीन जून 01 से लेकर जून 03 तक की नियमित उपस्थिति प्रमाणित हो जाती है क्योंकि प्रस्तुत दस्तावेजी साक्ष्य विपक्षी नियोजक के कार्यालय का अभिलेख है। जिस अभिलेख को विपक्षी गवाह ने नियमानुसार स्वयं के हस्ताक्षरों से प्रमाणित करवाया है। इस प्रकार प्रार्थी श्रमिक के नियमित नियोजन के अनुक्रम में खुद विपक्षी गवाह जे.एल. मीणा के कथनों का ही अवलोकित किया जाकर देखा जाये तो उसके आधार पर यह तथ्य निर्विवादित हो जाता है कि प्रार्थी ने विपक्षी के अधीन मई 01 से मई 02 तक के गुजरे कलेंडर वर्ष में 240 दिन से अधिक 293 दिन तक निरंतर एवं नियमित रूप से कार्य सम्पादन किया है। इन तथ्यों की पुष्टि प्रार्थी सुरेश कुमार ने स्वयं के कथन में भी की है। प्रार्थी श्रमिक द्वारा किये गये उक्त कार्य के ही मद्देनजर विपक्षी नियोजक ने प्रशंसा पत्र भी प्रार्थी के पक्ष में जारी किये हैं। यहां तक कि प्रार्थी के नियमित नियोजन हेतु जिला अफीम अधिकारी, भीलवाड़ा ने उच्चाधिकारियों से पत्राचार भी किया है। इसके बावजूद उप नारकोटिक्स आयुक्त के आदेशानुसार प्रार्थी श्रमिक को सेवा से पृथक किया गया।

जैसाकि हम पूर्व विवेचन के आधार पर यह अभिनिर्धारित कर चुके हैं कि अधि. 1947 की धारा 2-जे के अनुसार विपक्षी नियोजक उद्योग की श्रेणी में आता है तथा जिसके अधीन कार्यरत श्रमिक द्वारा किये जाने वाला कार्य अधि. 1947 के प्रावधानों से शासित है। दोनों पक्षों द्वारा उपलब्ध करवाये गये साक्ष्य के अनुसार प्रार्थी श्रमिक द्वारा विपक्षी नियोजक के कार्यालय में 1 जुलाई 2000 से लेकर जून 2003 तक निरंतर एवं नियमित कार्य किया गया है। किये गये कार्य का जो विवरण दोनों पक्षों द्वारा प्रस्तुत किया गया है, उसके अनुसार जून 2001 से मई 2002 तक के कलेंडर वर्ष में प्रार्थी श्रमिक द्वारा 240 दिन से कहीं अधिक 293 दिन का नियमित कार्य विपक्षी नियोजक के अधीन किया गया है। अधि. 1947 की धारा 25-बी के अनुसार प्रार्थी द्वारा संदर्भित समयावधि के दौरान नियमित रूप से कार्य सम्पादन किया है तो ऐसी अवस्था में प्रार्थी श्रमिक की सेवा समाप्त किये जाने से पूर्व अधि. 1947 की धारा 25 के आज्ञापक प्रावधानों की अनुपालना किया जाने आवश्यक है क्योंकि प्रार्थी द्वारा विपक्षी नियोजक के अधीन किया गया कार्य अधि. 1947 की धारा 25-बी के अनुसार नियमित नियोजन की श्रेणी में होने से उसे अधि. 1947 की धारा 25 के आज्ञापक प्रावधानों का संरक्षण प्राप्त है।

प्रार्थी श्रमिक के नियोजन की उपरोक्त वर्णित वैधानिक स्थिति के मद्देनजर विपक्षी नियोजक के आचरण को देखा जाये तो उन्होंने प्रार्थी श्रमिक को 1 जुलाई 2004 को मात्र मौखिक आदेश से सेवा से पृथक किया है। उसे सेवा से पृथक किये जाने से पूर्व विपक्षी नियोजक ने अधि. 1947 की धारा 25 के आज्ञापक प्रावधानों की अनुपालना किये बिना ही सेवा से अवैध एवं अनुचित ढंग से पृथक किया गया है । विपक्षी नियोजक ने प्रार्थी श्रमिक को सेवा पृथक किये जाने से पूर्व किसी प्रकार का कोई कारण बताओ नोटिस या उसके विरुद्ध किसी प्रकार की विभागीय कार्यवाही तक भी नहीं की है। यहां तक कि उसके द्वारा धारा 25-एफ के प्रावधानों की भी अनुपालना नहीं की है। ऐसी अवस्था में विपक्षी नियोजक द्वारा प्रार्थी श्रमिक की सेवा से पृथक किया जाना अवैध एवं अनुचित होने से प्रार्थी श्रमिक पूर्व पद पर पुन: नियोजन का अधिकारी है।

इस प्रकार उपरोक्त विवेचन के आधार पर श्रम मंत्रालय केन्द्र सरकार के द्वारा निर्णयार्थ प्रस्तुत किये गये इस विवाद को इस प्रकार निर्णीत किया जाता है कि—

विपक्षी नियोजक जिला अफीम अधिकारी, नारकोटिक्स विभाग, भीलवाडा द्वारा प्रार्थी श्रमिक श्री सुरेश कुमार जीनगर को दि. 1-7-2004 को सेवा से पृथक किया जाना अवैध एवं अनुचित है। इस आधार पर प्रार्थी श्रमिक विपक्षी नियोजक के अधीन पूर्वानुसार पुनः पूर्व पद पर नियोजित होने का अधिकारी है।

प्रार्थी श्रमिक को पंचाट प्रकाशित होने की तिथि से एक माह के भीतर पुनः पूर्व पद पर नियोजित किया जाये। प्रार्थी श्रमिक सेवा पृथक करने की तिथि से लेकर पुनः सेवा में नियोजित करने की तिथि तक, सेवा पृथक करते समय देय वेतन की दर से, कुल वेतन की 50 प्रतिशत राशि भी विपक्षी से प्राप्त करेगा। पंचाट की प्रति केन्द्र सरकार को भेजी जाये।

रमेश चंद मीणा, न्यायाधीश

नई दिल्ली, 16 अक्तूबर, 2012

का.आ.3375.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाइरेक्टर जनरल आफ वर्कस, सी.पी.डब्ल्यू.डी.और अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 26/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-10-2012 को प्राप्त हुआ था।

[सं.एल.-42011/06/2009-आई आर (डी.यू.)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 16th October, 2012

S.O. 3375.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/09) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the Director General of Works, CPWD and Others and their workman, which was received by the Central Government on 11-10-2012.

[No. L-42011/06/2009-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

IN THE COURT OF SHRI SATNAM SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO. 33, BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI-110032
I.D. No. 26/09

In the matter between :

The General Secretary,
All India CPWD (MRM)
Karamchari Sangathan,
House No. 4823, Gali No. 13,
Balbir Nagar Extension,
Shahdara, Delhi-110032. ...Workman

Versus

1. The Executive Engineer (Electrical),
Electrical Division-2, CPWD, I.P. Bhawan,
New Delhi-110002.

2. The Director General of Works,
CPWD, Nirman Bhawan,
New Delhi-110001. ...Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-42011/6/2009-IR (DU) dated 23.03.2009 has referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the demand of the All India CPWD (MRM) Karamchari Sangathan for grant of scale of pay of Rs. 4000-6000 and Rs. 4500-7000 under 1st and 2nd A.C.P. respectively by the management of CPWD to their workman Shri Emmanual Alexander is legal and justified? If yes, to what relief is the workman is entitled ?"

2. The workman filed his statement of claim. Written statemcnt was filed by thc management. Thereafter, the workman also filed replication. This case was posted for framing of issues. However, before framing of issues, the parties have amicably settled the matter out of court. They have filed terms of settlement arrived at bctwcen the parties which were reduced into writing. The terms of settlement have been signed by thc workman, Mr. Satish Kumar General Secretary of All India CPWD Karamchari Sangathan as well as by Mr. Lal Singh Executive Engineer Electrical Division-II CPWD Indraprastha Bhawan, New Delhi. As the matter has been amicably settled between the parties, award in terms of the settlement arrived at between the parties which shall form part of the award is passed in this case and the reference stands disposed of accordingly.

Dated : 12-9-2012

SATNAM SINGH, Presiding Officer

FORM-H

FORM FOR MEMORANDUM OF SETTLEMENT

Memorandum of Settlement between the Management of CPWD and All India CPWD (MRM) Karamchari Sangathan, House No. 4823, Gali No. 13, Balbir Nagar Extension, Shahdra, Delhi-110032 under Section 12(3) read with Section 18(3) of Industrial Disputes Act, 1947 before Shri Satnam Singh, Presiding Officer. Central Govt. Industrial Tribunal No. 2 Room No. 33, Karkardooma Court, Delhi on 09-07-2012
Name of the Parties :

REPRESENTING MANAGEMENT :

Shri Lal Singh
Executive Engineer, Electrical Division-II, CPWD
I.P. Bhawan, New Delhi -110002

4073 GI/12-24

REPRESENTING UNION :

Mr. Satish Kumar, General Secretary
All India CPWD (MRM) Karamchari Sangathan
House No. 4823, Gali No. 13,
Balbir Nagar Extension, Shahdra, Delhi-110032

SHORT RECITAL OF THE CASE

All India Central PWD (MRM) Karamchari Sangathan filed an industrial dispute vide I.D. No. 26/2009 against the Director General (Works), CPWD, Nirman Bhawan, New Delhi and the Executive Engineer, Electrical Division-II, CPWD, I.P. Bhawan, New Delhi over the matter of grant of scale of pay of Rs. 4000-6000 and Rs. 4500-7000 under In-situ Promotion w.e.f. 1.4.97 and 2nd ACP w.e.f. 9.8.99 respectively by the management of CPWD to their workman Shri Emmanual Alexander with all consequential benefits and thereafter revision of all terminal benefits.

Notices were issued to the parties and they have filed Statement of Claims, Written Statement and Rejoinders. After prolonged and protracted discussions between the parties on the said issues on various dates, the disputes has been resolved amicably on the following terms of settlement:

TERMS OF SETTLEMENT

1. The Management had issued the order for grant of selection grade to the skilled category of CPWD workmen after completion of 8 years of regular service w.e.f. 1.1.73 and payment of arrears w.e.f. 1.4.81 in the higher pay scale of Rs. 330-480 w.e.f. 1.1.73, Rs. 1200-1800 w.e.f. 1.1.86, 4000-6000 w.e.f. 1.1.96. The copy of the said order dated 9.6.2011 is enclosed herewith as Annexure-1.

2. That management had grant the benefits under 2nd ACP to the workman Shri Emmanual Alexander in the pay scale of Rs. 4500-7000 w.e.f. 9.8.99.

3. That the Executive Engineer, Electrical Division-II, CPWD had issued the office order dated 8.9.2011 for grant of selection grade to the workman and also made the payment of arrears of Rs. 72,100 vide cheque No. 567931 dated 3.7.2012 to the workman to this effect.

The Management has agreed and revised all the terminal benefits after grant selection grade and 2nd ACP benefits as stated in above paras. In view of the above, the Union has agreed to drop their demand for grant of In-situ promotion.

This Memorandum of Settlement is signed on this 09-07-2012 at Delhi.

Signature of the Parties :

Representing Management	Representing Union	Workman
	Sd./-	Sd./-
(Lal Singh)	(Satish Kumar)	(Emmanual Alexander)
Executive Engineer	General Secretary	Retired Operator
Electrical Division-II,	All India CPWD (MRM)	
CPWD, IP Bhawan,	Karamchari Sangathan	
New Delhi		

Witnesses :

1. Din Dayal
2. मनोज

नई दिल्ली, 16 अक्तूबर, 2012

का.आ. 3376.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 49/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/57/2008-आईआर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th October, 2012

S.O. 3376.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 16-10-2012.

[No. L-12012/57/2008-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 49/2008

Date of Passing Award -21st September, 2012

Between :

The Assistant General Manager,
State Bank of India, Bapujinagar Branch,
Distt. Khurda, Orissa,
Bhubaneswar (Orissa)

...1st Party-Management

(And)

Their workman Sri Binoda Bihari Sahoo,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar. (Orissa)

...2nd Party-Workman

Appearances:

Shri Alok Das, Authorized Representative ... For the 1st Party-Management

None. ... For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/57/2008 -IR (B-I), dated 10-07-2008 to this Tribunal for adjudication to the following effect:

> "Whether the action of the management of State Bank of India in relation to their Bapujinagar Branch, Bhubaneswar, in terminating services of Sri Binoda Bihari Sahoo, w.e.f. 30-9-2004, is legal and justified? If not, what relief the workman is entitled to"?

2. The 2nd Party- Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 18-04-1988 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 28-02-2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party- Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No.66 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 18-04-1988 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/ daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons including the 2nd Party-workman were called for interview in the year 1993 and those succeeded were appointed as per panel till 31-3-1997. As the 2nd Party-workman did not succeed in the interview, he could not be appointed in the Bank. But the Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order date 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank.

This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/ 1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Sahoo were discontinued much prior to the lapse of the panel list in the year 1997 his claim has become stale by raising the dispute after thirteen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?
2. Whether the workman has worked for 240 days as enumerated under section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, Bapujinagar Branch, Bhubaneswar in terminating services of Shri Binoda Bihari Sahoo w.e.f. 30-9-2004 is fair, legal and justified?
4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Santosh Narayan Jena as M. W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party- workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case —

> Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per- Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 66 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party- workman in the present case while in I.D. Case No.7 /2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 18-04-1988 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Santosh Narayan Jena in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies. . . He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch in 1997." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman

for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, in relation to their Bapujinagar Branch, Bhubaneswar in terminating the services of Sri Binoda Bihari Sahoo with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affidrmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above. under Issues No.2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2012

का.आ. 3377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 53/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/56/2008-आईआर(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th October, 2012

S.O. 3377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 53/2008) of the Central Govt. Industrial Tribunal-cum-Labour Court, Bhubandswar as shown in the Annexure in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 16-10-2012.

[No. L-12012/56/2008-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTJRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 53/2008

Date of Passing Award-5th October, 2012

Between:

The Assistant General Manager,
State Bank of India, IDCO Tower Branch,
Dist. Khurda, Orissa,
Bhubaneswar (Orissa)

...1st Party-Management

(And)

Their workman Sri Susanta Kumar Mohapatra,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar. (ORISSA)

....2nd Party-Workman

Appearances:

Shri Alok Das, ... Authorized Representative	For the 1st Party-Management
None ...	For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India, IDCO Branch and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/56/2008 -IR (B-I), dated 10-07-2008 to this Tribunal for adjudication to the following effect:

"Whether the action of the management of State Bank of India in relation to their IDCO Tower Branch,

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Bhubaneswar, in terminating services of Sri Susanta Kumar Mohapatra, w.e.f. 30.9.2004 is legal and justified? If not, what relief the workman is entitled to"?

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 14th January, 1986 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 28.02.2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No.63 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank in January, 1986 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/ daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1990 and 1993. But he was not found suitable hence could not be appointed in the Bank. The Union or the 2nd Party- workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC -3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Mohapatra had allegedly been terminated on 31-7-1988 his claim has become stale by raising the dispute after sixteen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?
2. Whether the workman has worked for 240 days as enumerated under Section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, IDCO Tower Branch, Bhubaneswar in terminating services of Shri Susanta Kumar Mohapatra with effect from 30.9.2004 without complying the provisions of the I.D. Act, 1947 is legal and justified?
4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or

documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Debaraj Mishra as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No.7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

> Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 63 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman ending for adjudication is maintainable being legal and justified. This r sue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service in January, 1986 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year M.W.-1 Shri Debaraj Mishra in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch on 31-7-1998." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, in relation to their IDCO Tower Branch, Bhubaneswar in terminating the services of Sri Susanta Kumar Mohapatra with effect from the alleged date of his

termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordin gly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2012

का.आ.3378.—औद्योगिक विवाद 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण संख्या-1, नई दिल्ली के पंचाट (आईडी संख्या 136/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/10/2012 को प्राप्त हुआ था।

[सं. एल-42012/52/2001 आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th October, 2012

S.O. 3378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No.136/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Dehradun Central Division-I, and their workmen, received by the Central Government on 16-10-2012.

[No. L-42012/52/2001-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 136/2011

The Secretary,
All India CPWD (MRM)
Karamchari Sangathan,
CPWD Filter Bed, Patia Camp,
Near CMIC Garhi Cantt.
Dehradun-248003. ...Workman

Versus

The Executive Engineer,
Dehradun Central Division-I,
CPWD, 20 Subhash Road,
Dehradun-248001 ...Management

AWARD

Estate Officer, who happened to be the Executive Engineer, Dehradun Central Division No.1, CPWD, Dehradun, was enjoined with powers to make allotment of government accommodation to the employees of Central Public Works Department (in short the management). Work charged employees were discriminated by the Estate Officer in the matter of allotment of general pool quarters, claimed All India Central PWD (MRM) Karmchari Sangthan (in short the Union). Union made a demand to stop discrimination in allotment of government pool accommodation. When things did not move to satisfaction of the Union, it gave a notice for peaceful lunch hour demonstration on 9.2.1999 at Divisional Office of the management at Dehradun. The Director General (Works), who happened to be the Head of Department, directed all concerned vide letter dated 9.9.1998 not to hold any meeting with un-recognized body/organization. As per the management, the Union was not a recognized trade union which fact was intimated by the Director General (Works) to the employees, through communication dated 3.9.1998. Despite the communication, the Union held demonstration during lunch hours i.e. from 1.00 P.M. to 2.00 P.M. on 9.2.1999. The employees who participated in the demonstration, were not paid half day wages for that day. It led the Union to raise a demand for release of half day's wages of the employees, who participated in demonstration. When the demand was not conceded to, an industrial dispute was raised by the Union before the Conciliation Officer. Since the management contested the claim, conciliation proceedings ended into a failure. On consideration of failure report so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/52/2001/IR(CM-II), New Delhi dated 6.3.2002 with following terms:—

> "Whether action of the Executive Engineer, Dehradun, Central Division No.I, CPWD, Dehradun in deducting half day wages on 9.2.1999 in respect of Workmen Who participated in the unlawful demonstration is legal and justified If not, to what relief they are entitled?"

2. Claim statement was filed on behalf of 28 employees pleading therein that previously they were members of the Union but now they have joined CPWD Mazdoor Union.

Then Branch Secretary of the Union gave a call for lunch hour demonstration on 9-2-1999. They participated in that demonstration from 1.00 P.M. to 2.00 P.M. and thereafter performed their duties from 2.00 P.M. till 5.00 P.M. The management arbitrarily punished them and deducted their half day wages for that day. The Branch Secretary of the Union was charge-sheeted for the demonstration, but exonerated of the charges by the Enquiry Officer. However, the claimants were penalized by way of deduction of their wages. Claimants assert that amount of wages deducted with their respective names and designations has been detailed below:—

Sl. No.	Name of workman	Designation	Amount deducted Rs.
1.	Ramesh Singh	Mason	89.00
2.	Mukhtiar	Plumber	100.00
3.	Chokhey Lall	Beldar	--
4.	Joginder Singh	Beldar	62.00
5.	Subhash Chandra	Beldar	63.00
6.	Rajesh Prasad	Beldar	61.00
7.	Praveen Kumar Chopra	Beldar	75.00
8.	Jaswant Singh	Plumber	78.00
9.	Ram Prakash	Carpentar	77.00
10.	Jagjiwan Prasad	Beldar	75.00
11.	Jitendra Mohan Joshi	Beldar	68.00
12.	Ramesh	Beldar	61.00
13.	Chandra Bahadur Gurung	Beldar	72.00
14.	Chhottey Lal	Beldar	74.00
15.	Ramesh	Carpentar	82.00
16.	Gopal	Plumber	78.00
17.	Ashok Kumar	Beldar	62.00
18.	Naresh	Beldar	63.00
19.	Brahm Dev	Beldar	63.00
20.	Chhajjoo	Beldar	67.00
21.	Kishan	Beldar	62.00
22.	Kamlanand	Beldar	61.00
23.	Bhagwan Singh	Masson	78.00
24.	Vijendra	Beldar	63.00
25.	Defeydar	Beldar	75.00
26.	Bhim Singh	Beldar	65.00
27.	Suresh	Beldar	62.00
28.	Rajesh	Beldar	62.00

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It has been claimed that deduction of the amounts referred above, was illegal. The management may be directed to refund the wages, deducted arbitrarily, plead the claimants.

3. The management demurred the claim pleading that there is no legal or statutory right to go on strike. Apex Court has ruled in T .K. Rangarajan [2003 (6) SCC 581] that strike is not a fundamental right. The Union was not a recognized trade union and its activities were illegal and unjustified. Vide communication dated 3rd September, 1998, the Director General (Works) had informed all concerned that the Union was not a recognized trade union. Communication dated 9-9-1998 was issued to impress upon them not to hold any meeting with an un-recognized body/ organization. As per proviso to FR-17(a)(i) a government servant, who is absent from duty without any authority shall not be entitled to pay and allowances during the period of absence. Strike, in which the claimants participated, was illegal. Their demonstration was not peaceful. Rather they involved in hooliganism, shouting slogans and passing bad remarks against their officers. In view of the principles of 'no work, no pay' they were not entitled to wages for the period of demonstration/strike. The claimants participated in an illegal strike and remained absent from their duties without any lawful authority. They resorted to strike during working hours. The incident was reported in press which fact corroborate that the claimants resorted to demonstration during working hours. Claimants are not entitled to wages for half day. Their claim is liable to be dismissed, pleads the management.

4. Shri Vijender Singh entered the witness box to unfold facts on behalf of the claimants. Shri Hitesh Kejriwal, Executive Engineer, testified facts on behalf of the management. No the witness was examined by either of the parties.

5. Shri B.K. Prasad, authorized representative, advanced arguments on behalf of the claimants. Shri Rajan Lal, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

6. Shri Vijinder Singh deposed that he is working with the management at Dehradun. On 9-2-1999 he was working at Forest Research Institute, Dehradun, along with his 27 colleagues. In those days they were raising a demand for allotment of residential accommodation for work charged

employees. They demonstrated on 9.2.1999 from 1.00 P.M. to 2.00 P.M. After 2.00 P.M. they reported back to their duties. On account of demonstration, the Management became annoyed and half day wages of participants in demonstration was deducted. No opportunity was given to them to explain facts, prior to deduction of their half day wages.

7. Shri Satinder Pershad Singh was their leader on that day. He was charge-sheeted by the management. A domestic enquiry was conducted. He was not found guilty of the charges and his full day wages for 9.2.1999 was released. During course of his cross-examination he projects that they demonstrated in front of Divisional Office, Ghantaghar, Dehradun. Forest Research Institute was at a distance of 4-5 Kms. from there. They left for "Ghantaghar" on their cycles at 1.00 P.M. Their leader delivered his talk for about one hour. They raised slogans relating to their unity. Their lunch hours are from 1.00 P.M. to 2.00 P.M. At about 1.30 P.M. they had a dialogue with their officers. At about 1.45 P.M. they departed for their work place.

8. Shri Hitesh Kejriwal, Executive Engineer, swears in his affidavit Ex.MW- 1/A, tendered as evidence, that the Union was not a recognized trade union and its activities during office hours were illegal and unjustified. The Director General (Works) had intimated the employees vide letter dated 3-9-1998 that the Union and its activities during office hours were illegal and unjustified. The Director General (Works) had intimated the employees vide letter dated 3-9-1998 that the Union was not a recognized trade union and commanded them not to hold any meeting with any un-recognized body/organization. As per conduct rules government servants cannot resort to any strike in connection with any matter pertaining to their service conditions. FR 17(a)(i) makes it clear that an employee, who absents himself from duty without any authority, shall not be I entitled to any pay and allowances during the period of such absence. Demonstration of the claimants was not peaceful. They outraged peace and involved in hooliganism, shouted slogans and passed bad remarks against their officers. They had no legal or fundamental right to demonstrate during working ; hours. There was no case in their favor for grant of full wages for that day. Report relating to their demonstration was published in press on 10-2-1999. During course of his cross-examination, he concedes that on 10-2-1999 he was not posted in Dehradun. He further concedes that he had no personal knowledge of facts. He admits that no enquiry was held against the claimants. He projects that show cause notices were served on the claimants which are not placed on record. He does not dispute Ex. MW-1/W-1 to Ex. MW-1/W-3 which documents relate to enquiry conducted against Shri Satinder Pershad Singh, Secretary of the Union.

9. When facts unfolded by Shri Vijinder Singh and Hitesh Kejriwal are appreciated, it came to light that the claimants were reeling under a feeling that they were being discriminated by the Estate Officer in the matter of allotment of residential accommodation. They raised their demand through the union but the management adopted a non co-operative attitude. As such, the claimants, under banner of Union, decided, to demonstrate during lunch hours before the Divisional Office, Dehradun. They gathered there and demonstrated. As per facts unfolded by Shri Vijender Singh, their demonstration was from 1.00 P.M. to 2.00 P.M. and in post lunch session they performed their duties. Shri Kejriwal could not dispel these facts, since he was not posted at Dehradun on the day of incident.

10. Strike is a recognized weapon of workmen to be resorted by them for asserting their bargaining power and for backing of their demands upon unwilling employer. It is to be used as a last resort when all their avenues of settlement of industrial dispute, as provided in statutory machinery, have proved futile. Strikes or lockout which are in contravention of the provision of Sections 22 and 23 of the Industrial Disputes Act 1947 (in short the Act), have been declared illegal. Right to go on strike, however, arises from "principles of natural justice as well as social justice". Workmen have after a long struggle succeeded in establishing that in proper cases weapon of strike is used as their economic power, to bring the employer to see and meet their view point, over the dispute between them. It is as a legitimate weapon of workmen for the purpose of ventilating their demands. Whether strike is justified or not should not be judged by the results of adjudication of demands. It might in certain cases be resorted to register protest and it cannot be said to be unjustified unless the reasons for it are absolutely perverse and unsustainable.

11. It has been projected by Shri Kejriwal that vide communication No. 221 EC IX dated 3-9-1998 Director General (Works) intimated all the employees that the Union is not a recognized trade union. He further projects that vide letter No. 6/3/98-ECX dated 10-9-1998, the Director General (Works) commanded all concerned not to hold any meeting with an un-recognized body/organization. Through these documents, the management wants to project that the Head of the Department had cautioned the

claimants not to hold any meeting with the Union. Implicitly the management tries to project that the demonstration conducted by the claimant was in violation of the directions issued by the Head of the Department and amounts to mis-conduct. The above words are to be given restricted interpretation so as to harmonize it with the provisions of the Act. As projected above, workmen have a right to resort to strike for ventilating their demands. Consequently it emerged that such directions shall have no application to an employee who happens to be workman within the meaning of Section 2(s) of the Act.

12. Right to strike and right to demonstrate are part of fundamental right of freedom of speech and freedom of association, guaranteed under Article 19(1)(a) and 19(1)(c) of the Constitution. Can such circular/letters issued by the Head of the Department be held to be reasonable? Restrictions in the interest of public order within the meaning of Article 19(2) and 19(4) of the Constitution can be imposed. Above communications prohibit the claimants from ventilating their gerievance under the banner of the Union. The Union if not a recognized trade union, would not be out of bound for the claimants, since they are free to join any association or union. Therefore restrictions so imposed by the Head of Department through the communications, referred above, cannot be said to be reasonable restrictions. The claimants had a right to demonstrate with a view to ventilate their grievance by means of demonstration.

13. Whether demonstration was justified? Such a question is not a mere question of fact, It is a mixed question of fact and law and has to be answered in the light of facts and circumstances of the case under reference. A demonstration in an industrial establishment would be justified when an indiscriminate and hasty use of this weapon has not been made. However, there may be cases where demand is of such an urgent and serious nature that it would be unreasonable to expect the labour to wait. But justifiability of a demonstration/strike has to be viewed from the stand point of fairness and reasonableness of the demand made by the workmen and not merely from the stand point of their exhausting all other "legitimate means open to them for getting their demands fulfilled. A strike/ demonstration may be justified if it is bonafide, resorted to for the betterment of the conditions of service of the workmen. A strike/demonstration cannot be said to be unjustified unless the reasons for it are entirely perverse or irrational. See Crompton Greaves Ltd. [1978 (2) LLJ. 80].

14. Facts and circumstances pertaining to this case project that the claimants were belaboring under a feeling that they were being discriminated in allotment of residential accommodation to them. They joined the Union, being the union of their choice. They raised a demand before the authorities but their grievances were not sorted out. A notice was served on the authorities to demonstrate their grievances before the Divisional Office, Ghantaghar, Dehradun on 9-2-1999. The claimants participated in their demonstration to ventilate their grievances. The demonstration does not fall within the ambit of Sections 22 or 23 of the Act to declare it illegal under Section 24 of the Act. Under these circumstances it emerges that the demonstration cannot be held to be entirely perverse or irrational to term it illegal and unjustified.

15. Though it was asserted that the claimants resorted to hooliganism, shouted slogans and passed bad remarks against the officers but those circumstances/ events are not properly portrayed by Shri Kejriwal in his testimony before the Tribunal. Mere allegations that the claimants were involved in hooliganism and resorted to shouting slogans would not make this Tribunal to comment that the claimants became violent and aggressive. Simple assertion that they passed bad remarks would not lead an ordinary prudent man to conclude that the claimants reflected feelings of insubordination and projected conduct subversive of discipline. For want of facts it cannot be concluded that the claimants committed grave mis-conduct when they resorted to demonstration on 9-2-1991.

16. There is other facet of the coin. Though show-cause notices were alleged to have been Issued to the claimants but same were not placed before the Tribunal to ascertain that reasonable opportunity was given to them to explain their conduct. In absence of these facts it cannot be said that the management was justified in its act of deducting half day wages for 9-2-1991 from the salary of the claimants. Had the management intended to discipline them, their half day leave would have been deducted. That method was not adopted. Action of the management is violative of principles of natural justice. Hence its action of deduction of half day wages cannot be upheld. Under these circumstances it is crystal clear that the act of the management cannot be held to be legal and justified. The claimants are entitled for release of their half day wages, deduced for 9-2-1991. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 14-09-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली 16 अक्तूबर, 2012

का.आ. 3379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण संख्या-1, नई दिल्ली के पंचाट (आईडी संख्या 254/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/10/2012 को प्राप्त हुआ था।

[सं. एल-42012/232/2004-आईआर(सीएम-II)]

बी.एम.पटनायक, अनुभाग अधिकारी

New Delhi, the 16th October, 2012

S.O. 3379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 254/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. CPWD, Central Public Works Department, and their workman, which was received by the Central Government on 16/10/2012.

[No. L-42012/232/2004-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI.

I D. No.254/2011
Shri Noor Hussan
S/o Sh.Mohammad Liyakat Ali,
Through Shri Ravi Shankar,
General Secretary Workers' Union,
167, Panchkuian Road,
New Delhi -110001. ...Workman

Versus

1. The Director General,
   CPWD, Nirman Bhawan,
   New Delhi -110001.

2. The Executive Engineer (Elect.)
   Elect Constn Divn. II
   CPWD, Vigyan Bhawan,
   New Delhi. ...Management

AWARD

A contract labour, working as DG Set Operator in Vigyan Bhawan, belaboured under a belief that he was rendering services to the Central Public Works Department (in short the management), who maintains Vigyan Bhawan, New Delhi and provides essential services there, when seminars and functions take place in that building. For providing services as DG Set Operator, the management had awarded contract to a contractor, who engaged the contract labour, namely, Shri Noor Hassan. Shri Noor Hassan was issued various passes by Ministry of Home Affairs, Government of India, New Delhi, from time to time to enable him to have access to Vigyan Bhawan, when seminars and functions are held there. In those passes, it has been projected that Shri Noor Hassan works with the management. It led Shri Noor Hassan to approach CPWD Karamchari Union (in short the Union) and the latter filed a writ petition before High Court of Delhi, seeking directions for the management, to regularize services of Shri Noor Hassan and others, who were similarly placed. Shri Noor Hassan was a party to that writ petition. When writ petition was dismissed, he filed a later patent appeal, which was also dismissed with liberty to raise an industrial dispute. Thereafter, the union raised a dispute before the Conciliation Officer seeking regularization of services of Shri Noor Hassan in the establishment of the management. Management contested the claim and as such conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to Central Government Industrial Tribunal No.2, New Delhi, for adjudication, vide order No.L 42012/232/2004-IR(CM-II), New Delhi dated 09.08.2005, with following terms:

> "Whether the demand of the Worker's union for regularization of workmen, Shri Noor Hassan, S/o Shri Mohammad Layakat Ali in the establishment of CPWD is legal and justified? It yes, to what relief the workman is entitled and from which date?"

2. Claim statement was filed by Shri Noor Hassan pleading therein that he was employed by the management as DG Set Operator at its Electrical Division, Vigyan Bhawan, New Delhi. He was initially engaged on 02.08.1984. His monthly wages is Rs.3091.00. He has performed duties sincerely, honestly and diligently to the satisfaction of his superiors. His conditions of service are governed by the CPWD manual. His wages and other monetary benefits are being paid by the management out of its sanctioned funds. However, he was not provided with appointment letter, pay slip, confirmation letter etc. He used to work for more than 12 hours a day and that too for 365 days in a year. No leaves were granted to him, even on festivals and national holidays. Somehow, clandestinely his services were put under sham contractor by the management, who exists only on paper. Despite his long service record, he has not been confirmed in service. He claims that he may be regularized in services of the management from 02.08.1984 and declared entitled to wages in regular pay scales.

3. Claim was demurred by the management, pleading that there existed no relationship of employer and employee between the parties. Claimant was an employee of the contractor and worked under his direct control and supervision. The contractor employs his workmen for doing assigned jobs and payment is made by the contractor to his employees. Payment, towards specific job entrusted to the contractor, was made to him. Claimant has provided operational services on DG Set at Vigyan Bhawan, being an employee of the contractor. M/s Amit Elevator Services, his employer, had issued employment card and paid wages to the claimant. Since claimant is a contract labour, he does not have any right to raise an industrial dispute against the management. It has been pleaded that the claim put forward may be brushed aside, being devoid of merits.

4. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi dated 30.03.2011, case was transferred to this Tribunal by the appropriate Government for adjudication.

5. Claimant had entered the witness box to establish his claim. No other witness was examined on his behalf.

6. Shri V.K. Singhal, Executive Engineer had tendered his affidavit as evidence on behalf of the management. However, he opted not to enter the witness box, to accord an opportunity to the claimant to purify contents of his affidavit, by an ordeal of cross examination. No right could be accorded to the claimant to cross examine Shri Singh. Therefore, affidavit of Shri Singh cannot be read in evidence. No other witness was brought on behalf of the management.

7. Arguments were heard at the bar. Shri Mukesh Kumar Verma, authorised representative, advanced arguments on behalf of the claimant. Shri Pankaj Bhatia, authorised representative, presented facts on behalf of the management. I have given my careful consideration to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

8. In his affidavit dated 06.12.2007, tendered as evidence, claimant swears that he is working with the management as DG Set Operator at its Electrical Division, Vigyan Bhawan, New Delhi, since 02.08.1984. He had performed his duties sincerely, honestly, diligently and not given any chance of complaint to his superiors. Somehow, clandestinely without his knowledge, he was put under a sham contractor, who exits on papers only. However, during course of his cross examination, he candidly admitted that he was employed by the contractor and there was no direct relationship of employer and employee between him and the management. He admits in bold words that contractor used to make payment to him as per his entitlement, by calculating his attendance from the attendance register. Contractor used to take his signatures on attendance register, after affixing revenue stamp at the time of making payment to him. He conceded that he never received any appointment letter from the management.

9. As noted above, the claimant was employed by the contractor. According to him, contractor used to pay wages to him. He further makes it clear that his wages were being paid, in accordance with his entitlement, as per attendance recorded in attendance register. At the time of payment of his wages, he used to sign attendance register on revenue stamp affixed over it. He announced that the management never issued any appointment letter to him. He admits that his signatures appear at point A on Ex.WW/A and at point B on Ex.WW/B. Ex.WW1/A is the employment card issued in favour of the claimant by M/s Amit Elevator Services. Ex. WW1/B is the attendance register for April, 2006, prepared by M/s Amit Elevator Services. These two documents give confirmation to the effect that the claimant was an employee of M/s Amit Elevator Services, who paid wages to him for the month of April 2006. Out of admission made by the claimant and facts established by above documents it stood established that he was an employee of the contractor. He was never engaged by the management. His wages were paid by the contractor and not by the management. Thus, it is crystal clear that it was the contractor who was the paymaster of the claimant.

10. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the management? For an answer to this proposition, theTribunal has to take note of the law contained in section10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,

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(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation -If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

11. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

12. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

13. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus

it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) LLJ. 233), which was referred with approval in Steel Authority of India.

14. In Shivnandan Sharma [1955(1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

15. In Hussainbhai (supra) the petitioner, who was manufacturing ropes,entrusted the work to a contractor who engaged his own workers. When, after sometime, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner on reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the rear employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractor is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

16. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) SCC 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the management since he agitates that the contract agreement' between the management and the contractor is sham and nominal.

17. Whether any directions for deeming the contract labour as having become the employee of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that

Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by Section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non- compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

18. In the Steel Authority of India (supra) the Apex Court laid emphasis ... ..."the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

19. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the management ? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

> "29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

20. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

> "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, It is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the

circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

21. In Gujarat Electricity Board (1995 (5) S.C.C. 27) the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:-

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

(i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.

(ii) If the contract is sham or not genuine, the workmen of the socalled contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

22. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujrat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests I with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of Section 10 of the Contract Labour Act.

23. Now I would turn to facts of the present controversy. It is not a case where an employee of the contractor, employed in statutory canteen has invoked jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether the contract was sham and nominal. For an answer to this proposition, it would be expedient to have a glance on the evidence adduced by the claimant in that regard. At the cost of repetition, it is said that in his affidavit, the claimant mentioned that somehow clandestinely without his knowledge, he was put under a sham contractor who exists only on paper. Except this bald testimony, no other evidence has been brought over the record to project that the contract agreement entered into between the management and M/s. Amit Elevator services

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was sham and nominal. No efforts were made by the claimant even to seek assistance of this Tribunal to bring contract agreement on record. Contract agreement entered into between the management of M/s Amit Elevator Services is not available for its perusal, with a view to ascertain that it was perfect paper arrangement. Therefore, absence of that document leaves this Tribunal in lurch.

24. Elementary principles of law, reminds me that a party who wants a verdict in his favour must prove facts asserted by him in support of the claim. Onus lies on him to prove all those facts which he asserts in support of his claim. In absence of any reasonable proof, he shall fail. Here in the case, claimant asserts that he was put under contractor and contract agreement between the management and the contractor was sham and nominal. Therefore, it was for the claimant to attack the contract agreement. Undoubtedly the contract agreement was not in his possession. However, he could have invoked the jurisdiction of this Tribunal under sub section (3) of section 11 of the Industrial Disputes Act, 1947 for compelling production of the contract agreement before the Tribunal. No such efforts were made by the claimant to invoke such jurisdiction, seeking directions against the management for production of the contract agreement. Thus, it is evident that the claimant never wanted this Tribunal to look into the contract agreement entered into between the management and M/s Amit Elevator Services, with a view to interpret its contents to arrive at a conclusion whether it was sham and nominal.

25. Contract agreement was not brought before the Tribunal. On the other hand, parole evidence was brought over record to the effect that the claimant was put under contractor in a clandestine manner. This weak evidence was discarded by the claimant himself when he testified that he was engaged by the contractor. He admitted his signatures on employment card issued by the contractor in his favour. Therefore, it is evident that the claimant made wild guess when he testified that he was placed under contractor in a clandestine manner. He nowhere disputes that his wages were being paid by the contractor who used to affix revenue stamp on attendance register and obtain his signatures in token of payment. Thus, it is crystal clear that the claimant was well aware that he was an employee of the contractor. His claim that he was clandestinely placed under contractor is false to his own knowledge.

26. He makes it apparent that his attendance in attendance register were calculated by the contractor to ascertain his entitlement for payment of wages in a particular month. These facts make it apparent that it was the contractor who used to record his attendance and assign work to him. Factors of control and supervision by an employer on his employee are described in various precedents.

In Chintaman Rao [1958 (II) LLJ 252] the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985 (II) LLJ 4] Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

27. In Dharangadhara Chemical Works Limited [1957 (1) LLJ 477], the Apex Court ruled that test of "supervision and control may be taken as the prima facie test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the prima facie test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (supra), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje [1962(1) LLJ 119], the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V. P. Gopala Rao [1970 (11) LLJ 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub-section (1) of Section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory

implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bid is which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House [1973 (11) LLJ 495] the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

28. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it would be wrong to say that in every case it is a decisive factor. In Shining Tailors [1983 (11) LLJ 143], the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant, who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K.Keswa Reddiar [1957 (1) LLJ 645]. In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968 (1) LLJ 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad [1989 Lab.I.C.1770]. The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990 (1) LLJ 50].

29. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work.. these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating nature of work to be done but refers to other incidents having a bearing on process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

30. At the cost of repetition, it is said that attendance of the claimant was marked in the attendance register of the contractor. Contractor used to count his attendance for a particular month and then ascertain his entitlement for payment of wages. Contractor used to pay wages to the claimant. At the time of making payment of wages, proper receipt was obtained. Therefore, it is evident that the contractor was not only the paymaster but he exercised control and supervision on work and conduct of the claimant also. He was the person who exercised his right of removal and assigned work as element of control and supervision on the claimant. All these facts make it apparent that control and supervision which were financial, administrative, disciplinary and otherwise vested in the contractor. Under these circumstances, it could not be said that the contractor was interposed in between by the management with a view to deny legal rights to the claimant. Consequently, it is concluded that the claimant has not been able to project that the contractor was an intermediary only with a view to evade his legal rights. I am constrained to conclude that the claimant has miserably failed to project that the contract between M/s Amit Elevator Services and the management was draped in perfect legal arrangement, with a view to frustrate his claim. Under these circumstances, no findings can be recorded in favour of the claimant.

31. Reasons detailed above make me to conclude that the claimant has not been able to probablise even that the contractor was an intermediary and in fact he was an employee of the management. Claim put forward for regularization of his services with the management is uncalled for. The same is, therefore, brushed aside. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Government for publication.

Dated : 17-09-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2012

का. आ. 3380.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन. एल. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों

के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (आईडी संख्या 27/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/27/2012-आईआर (सीएम-II)]

बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th October, 2012

S.O. 3380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of The Neyveli Lignite Corporation Ltd. and their workmen received by the Central Government on 16-10-2012.

[No. L-22012/27/2012-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 27th September, 2012

Present : A.N. JANARDANAN, Presiding Officer

Industrial Dispute No. 27/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their Workman)

BETWEEN

The General Secretary, NLC Workers Solidarity Union, A-2 Screw Lane, Block-11, Neyveli-607803 ...1st Party/Petitioner

Vs.

The Director, The Neyveli Lignite Corporation Ltd., Corporate Office Neyveli-607801 ...2nd Party/Respondent

Appearance :

For the 1st Party/Petitioner Union : M/s. V. Ajoy Khose & S. Manogaran

For the 2nd Party/Management : M/s. N.A.K. Sarma & N. Nithianandam

ORDER

The Central Government, Ministry of Labour and Employment vide its Order No. L-22012/27/2012-IR-(CM-II), dated 19-04-2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of management in transferring S/Sri L. Rajendran, R. Ravichandran and P. Ramalingam who are functioning as Vice-President, General Secretary and Secretary of the Union is justified? To what relief the concerned employees are entitled?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as I D 27/2012 and issued notices to both sides. Both sides entered appearance through their respective counsel.

3. While the matter stood further for the filing of their respective pleadings including the Claim Statement of the petitioner from time to time and this day, the counsel for the petitioner filed a memo to the effect that the concerned workman whose transfers are impugned herein have already joined and have been working there for 1-1/2 years thereafter. Therefore the dispute is not pursued further. They also prayed for recording the memo and close the dispute with liberty to challenge such malafide transfers in future.

4. A copy of the memo was served on the other side, which opposed orally a reservation being made in the order being passed by this Tribunal according liberty to the petitioner to challenge future transfers.

5. Without laboring much, it is discernible that even if in the absence of any objection of the Respondent regarding reservation of any liberty, such reservation need not be and could not be made in the given factual and legal scenario of the aspect. There is no proof of the allegation of the petitioner to impung the so-called transfers of the concerned workman as being mala fide. What is sought to be impugned is only any such mala fide transfers that may occasion. Again the transfers which are sought to be challenged are those which are "executory" in nature which may arise in future. In other words the petitioner does not want any liberty to be reserved in relation to the present reference viz. the transfer of concerned workman to other places, which have by now taken their due course with their joining duty in the new stations and commencement of their functioning since 1-1/2 years from the past. So what is sought to be challenged is future transfers that may supervene.

6. It is worthy to note that it is for safeguarding the benevolence of the workman that the Industrial Dispute Act, 1947 (Act No. 14 of 1947: as amended by Act No. 24/2010 w.e.f. 15-09-2010) supervened and came into being

in the statute books. In the preamble the act proclaims itself as an act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

7. The apprehended transfer that may be fall the concerned workman if and when arises in future, on a new course of action, could be challenged then and there invoking the provisions of Industrial Disputes Act for which no reservation at the hands of this Tribunal is necessary and it is especially so for the reason that the transfers that would have to be challenged then is not the same dispute involved in this reference, in which case only a reservation as desired for might be meaningful. Therefore any reservation prayed for is not at all necessary.

8. Since the referred dispute is not wanted to be pursued, the dispute is only to be closed.

9. In the result, memo is recorded. The referred dispute is mentioned as closed as not pressed without any need for adjudication and

10. A copy of the order will be forwarded to the Ministry for favour of kind information and necessary action.

11. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th September, 2012).

A.N. JANARDANAN, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2012

का.आ. 3381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-1, नई दिल्ली के पंचाट (आईडी संख्या 137/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.10.2012 को प्राप्त हुआ था।

[सं. एल-42012/53/2001-आई.आर.(सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th October, 2012

S.O. 3381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 137/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial dispute between the management of Dehradun Central Division-I, and their workmen, received by the Central Government on 16-10-2012.

[No. L-42012/53/2001-IR(CM-II)]

B. M. PATNAIK, Section Officer

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ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No.137/2011

The Secretary,
All India CPWD (MRM)
Karamchari Sangathan,
CPWD Filter Bed, Patia Camp,
Near CMIC Garhi Cantt,
Dehradun -248003

...Workman

Versus

The Executive Engineer,
Dehradun Central Division-I,
CPWD, 20 Subhash Road,
Dehradun-248001

...Management

AWARD

Estate Officer, who happened to be the Executive Engineer, Dehradun Central Division No.1, CPWD, Dehradun, was enjoined with powers to make allotment of government accommodation to the employees of Central Public Works Department (in short the management). Work charged employees were discriminated by the Estate Officer in the matter of allotment of general pool quarters, claimed All India Central PWD (MRM) Karmchari Sangthan (in short the Union). Union made a demand to stop discrimination in allotment of government pool accommodation. When things did not move to satisfaction of the Union, it gave a notice for peaceful lunch hour demonstration on 9-2-1999 at Divisional Office of the management at Dehradun. The Director General (Works), who happened to be the Head of Department, directed all concerned vide letter dated 9-9-1998 not to hold any meeting with un-recognized body/organization. As per the management, the Union was not a recognized trade union which fact was intimated by the Director General (Works) to the employees, through communication dated 3-9-1998. Despite the communication, the Union held demonstration during lunch hours i.e. from 1.00 P.M. to 2.00 P.M. on 9-2-1999. The employees who participated in the demonstration, were not paid one day wages for that day. It led the Union to raise a demand for release of one day's wages of the employees, who participated in demonstration. When the demand was not conceded to, an industrial dispute was raised by the Union before the Conciliation Officer. Since the management contested the claim, conciliation proceedings ended into a failure. On consideration of failure report so submitted by the Conciliation Officer, the appropriate Government referred

the dispute to his Tribunal for adjudication, vide order No.L-42012/53/2001/IR(CM-II), New Delhi dated 5-3-2002 with following terms:-

"Whether action of the Executive Engineer (Electrical), CPWD, Dehradun in deducting one day wages on 9-2-1999 of workmen who participated in peaceful demonstration is legal and justified. If not, to what relief they are entitled to?"

2. Claim statement was filed on behalf of 9 employees pleading therein that previously they were members of the Union but now they have joined CPWD Mazdoor Union. Then Branch Secretary of the Union gave a call for lunch hour demonstration on 9-2-1999. They participated in that demonstration from 1.00 P.M. to 2.00 P.M. and thereafter performed their duties from 2.00 P.M. till 5.00 P.M. The management arbitrarily punished them and deducted their one day wages for that day. The Branch Secretary of the Union was charge-sheeted for the demonstration, but exonerated of the charges by the Enquiry Officer. However, the claimants were penalized by way of deduction of their wages. Claimants assert that amount of wages deducted with their respective names and designations has been detailed below:—

Sl. No.	Name of workman	Designation	Amount deducted Rs.
1.	Ram Pal	Painter	226.00
2.	Harjinder Singh	Sr. A.C.M.	232.00
3.	Rajinder Prasad	Wireman	186.00
4.	Ram Chander Singh	Operator	215.00
5.	Rajan Kumar	Khallasi	147 .00
6.	Mam Raj	Khallasi	155.00
7.	Krishan Singh	Khallasi	155.00
8.	Chhota Lal	Wireman	167.00
9.	Jagdeep Singh	Wireman	222.00

It has been claimed that deduction of the amounts referred above, was illegal. The management may be directed to refund the wages, deducted arbitrarily, plead the claimants.

3. The management demurred the claim pleading that there is no legal or statutory right to go on strike. Apex Court has ruled in T.K. Rangarajan (2003 (6) SCC 581) that strike is not a fundamental right. The Union was not a recognized trade union and its activities were illegal and unjustified. Vide communication dated 3rd September, 1998, the Director General (Works) had informed all concerned that the Union was not a recognized trade union. Communication dated 9-9-1998 was issued to impress upon them not to hold any meeting with un-recognized body/organization. As per proviso to FR-17(a)(i) a Government servant, who is absent from duty without any authority shall not be entitled to pay and allowances during the period of absence. Strike, in which the claimants participated, was illegal. Their demonstration was not peaceful. Rather they involved in hooliganism, shouting slogans and passing bad remarks against their officers. In view of the principles of 'no work, no pay' they were not entitled to wages for the period of demonstration/ strike. The claimants participated in an illegal strike and remained absent from their duties without any lawful authority. They resorted to strike during working hours. The incident was reported in press which fact corroborate that the claimants resorted to demonstration during working hours. Claimants are not entitled to wages for one day. Their claim is liable to be dismissed, pleads the management.

4. Shri Bharat Singh and Sh.Chirenjeev Jha entered the witness box to unfold facts on behalf of the claimants. Shri N.K.Bansal, Executive Engineer, testified facts on behalf of the management. No other witness was examined by either of the parties.

5. Shri B.K. Prasad, authorized representative, advanced arguments on behalf of the claimants. Shri Rajan Lal, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

6. Shri Bharat Singh deposed that on 9-2-1999 nine employees were raising demand for allotment of residential accommodation for work charged employees. They demonstrated on 9-2-1999 from 1.00 P.M. to 2.00 P.M. After 2.00 P.M. they reported back to their duties. On account of demonstration, the management became annoyed and one day wages of participants in demonstration was deducted. No opportunity was given to them to explain facts, prior to deduction of their one day wages.

7. Shri Chirenjeev Jha deposed that he was posted at Dehradun. In his testimony he projects that the claimants demonstrated in front of Divisional Office, Ghantaghar, Dehradun. Forest Research Institute was at a distance of 4-5 Kms from there. They left for "Ghantaghar" on their cycles at 1.00 P.M. Their leader delivered his talk for about one hour. They raised slogans relating to their unity. Their lunch hours are from 1.00 P.M. to 2.00 P.M. At about 1.30 P.M. they had a dialogue with their officers. At about 1.45 P.M. they departed for their work place.

8. Shri N.K.Bansal, Executive Engineer, swears in his affidavit Ex.MW-1/A, tendered as evidence, that the Union was not a recognized trade union and its activities during office hours were illegal and unjustified. The Director General (Works) had intimated the employees vide letter

dated 3-9-1998 that union activities during office hours were illegal and unjustified. The Director General (Works) had intimated the employees vide letter dated 3-9-1998 that the Union was not a recognized trade union and commanded them not to hold any meeting with any un-recognized body/organization. As per conduct rules Government servants cannot resort to any strike in connection with any matter pertaining to their service conditions. FR 17(a)(i) makes it clear that an employee, who absents himself from duty without any authority, shall not be entitled to any pay and allowances during the period, of such absence. Demonstration of the claimants was not peaceful. They outraged peace and involved in hooliganism, shouted slogans and passed bad remarks against their officers. They had no legal or fundamental right to demonstrate during working hours. There was no case in their favour for grant of full wages for that day. Report relating to their demonstration was published in press on 10-2-1999. During course of his cross-examination, he concedes that on 10-2-1999 he was not posted in Dehradun. He further concedes that he had no personal knowledge of facts. He admits that no enquiry was held against the claimants. He projects that show cause notices were served on the claimants which are not placed on record. He does not dispute Ex.MW-1/W-1 to Ex.MW-1/W-3 which documents relate to enquiry conducted against Shri Satinder Pershad Singh, Secretary of the Union.

9. When facts unfolded by Shri Bharat Singh, Chirenjeev Jha and N.K.Bansal are appreciated, it came to light that the claimants were reeling under a feeling that they were being discriminated by the Estate Officer in the matter of allotment of residential accommodation. They raised their demand through the Union but the management adopted a non co-operative attitude. As such, the claimants, under the banner of Union, decided to demonstrate during lunch hours before the Divisional Office, Dehradun. They gathered there and demonstrated. As per facts unfolded by Shri Bharat Singh and Shri Jha, their demonstration was from 1.00 P.M. to 2.00 P.M. and in post lunch session they performed their duties. Shri N.K.Bansal could not dispel these facts, since he was not posted at Dehradun on the day of incident.

10. Strike is a recognized weapon of workmen to be resorted by them for asserting their bargaining power and for backing of their demands upon unwilling employer. It is to be used as a last resort when all their avenues of settlement of industrial dispute, as provided in statutory machinery, have proved futile. Strikes or lockout which are in contravention of the provision of Sections 22 and 23 of the Industrial Disputes Act 1947 (in short the Act), have been declared illegal. Right to go on strike, however, arises from "principles of natural justice as well as social justice". Workmen have after a long struggle succeeded in establishing that in proper cases weapon of strike is used as their economic power, to bring the employer to see and meet their view point, over the dispute between them. It is as a legitimate weapon of workmen for the purpose of ventilating their demands. Whether strike is justified or not should not be judged by the results of adjudication of demands. It might in certain cases be resorted to register protest and it cannot be said to be unjustified unless the reasons for it are absolutely perverse and unsustainable.

11. It has been projected by Shri N.K.Bansal that vide communication No. 221 EC IX dated 3-9-1998 Director General (Works) intimated all the employees that he Union is not a recognized trade union. He further projects that vide letter No. 6/3/98-ECX dated 10-9-1998, the Director General (Works) commanded all concerned not to hold any meeting with an un-recognized body/organization. Through these documents, the management wants to project that the Head of the Department had cautioned the claimants not to hold any meeting with the Union. Implicitly the management tries to project that the demonstration conducted by the claimants was in violation of the directions issued by the Head of the Department and amounts to mis-conduct. The above words are to be given restricted interpretation so as to harmonize it with the provisions of the Act. As projected above, workmen have a right to resort to strike for ventilating their demands. Consequently it emerged that such directions shall have no application to an employee who happens to be workman within the meaning of Section 2(s) of the Act.

12. Right to strike and right to demonstrate are part of fundamental right of freedom of speech and freedom of association, guaranteed under Article 19(1)(a) and 19(1)(c) of the Constitution. Can such circular/ letters issued by the Head of the Department be held to be reasonable? Restrictions in the interest of public order within the meaning of Article 19(2) and 19(4) of the Constitution can be imposed. Above communications prohibit the claimants from ventilating their grievance under the banner of the Union. The Union if not a recognized trade union, would not be out of bound for the claimants, since they are free to join any association or union. Therefore restrictions so imposed by the Head of Department through the communications, referred above, cannot be said to be reasonable restrictions. The claimants had a right to demonstrate with a view to ventilate their grievance by means of demonstration.

13. Whether demonstration was justified? Such a question is not a mere question of fact. It is a mixed question of fact and law and has to be answered in the light of facts and circumstances of the case under reference. A demonstration in an industrial establishment would be justified when an indiscriminate and hasty use

of this weapon has not been made. However, there may be cases where demand is of such an urgent and serious nature that it would be unreasonable to expect the labour to wait. But justifiability of a demonstration/strike has to be viewed from the stand point of fairness and reasonableness of the demand made by the workmen and not merely from the stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled. A strike/demonstration may be justified if it is bonafide, resorted to for the betterment of the conditions of service of the workmen. A strike/ demonstration cannot be said to be unjustified unless the reasons for it are entirely perverse or irrational. See Crompton Greaves Ltd. (1978 (2) LLJ. 80).

14. Facts and circumstances pertaining to this case project that the claimants were belaboring under a feeling that they were being discriminated in 'allotment of residential accommodation to them. They joined the Union, being the union of their choice. They raised a demand before the authorities but their grievances were not sorted out. A notice was served on the authorities to demonstrate their grievancies before the Divisional Office, Ghantaghar, Dehradun on 9-2-1999. The claimants participated in their demonstration to ventilate their grievances. The demonstration does not fall within the ambit of Sections 22 or 23 of the Act to declare it illegal under section 24 of the Act. Under these circumstances it emerges that the demonstration cannot be held to be entirely perverse or irrational to term it illegal and unjustified.

15. Though it was asserted that the claimants resorted to hooliganism, shouted slogans and passed bad remarks against the officers but those circumstances/events are not properly portrayed by Shri N.K.Bansal in his testimony before the Tribunal. Mere allegations that the claimants were involved in hooliganism and resorted to shouting slogans would not make this Tribunal to comment that the claimants became violent and aggressive. Simple assertion that they passed bad remarks would not lead an ordinary prudent man to conclude that the claimants reflected feelings of insubordination and projected conduct subversive of discipline. For want of facts it cannot be concluded that the claimants committed grave mis-conduct when they resorted to demonstration on 9-2-1999.

16. There is other facet of the coin. Though show-cause notices were alleged to have been issued to the claimants but same were not placed before the Tribunal to ascertain that reasonable opportunity was given to them to explain their conduct. In absence of these facts it cannot be said that the management was justified in its act of deducting one day wages for 9-2-1999 from the salary of the claimants. Had the management intended to discipline them, their one day leave would have been deducted. That method was not adopted. Action of the management is violative of principles of natural justice. Hence its action of deduction of one day wages cannot be upheld. Under these circumstances it is crystal clear that the act of the management cannot be held to be legal and justified. The claimants are entitled for release of their one day wages, deduced for 9-2-1999. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 14.09.2012

नई दिल्ली, 16 अक्तूबर, 2012

का.आ. 3382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **पश्चिम रेलवे** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ संख्या CGIT of 119/2004,संदर्भ आईटीसी 97/1998 (Old)) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2012 को प्राप्त हुआ था।

[सं. एल-41012/12/98-आईआर(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 16th October, 2012

S.O. 3382.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. of 119/2004, Ref. ITC 97/1998(Old) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, AHMEDABAD (GUJARAT) as shown in the Annexure, in the Industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 16-10-2012.

[No. L-41012/12/98-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present.....
Binay Kumar Sinha,
Presiding Officer,
CGIT cum Labour Court,
Ahmedabad, Dated 04-10-2012

Reference: CGITA of 119/2004

Reference: ITC. 97/1998 (Old)

1. The Chief Works Manager
   Western Railway, Engineering-
   Workshop, Sabarmati, D Cabin,
   Sabarmati, Ahmedabad.

2. The Chief Bridge Engineer,
Western Railway, Head Quarter Office,
Churchgate, Mumbai.

.....First Parties

And their workman
Shri Khem Karan D. Sharma,
Represented through PRKP,
E/209, Sarvottam Nagar,
New Railway Colony,
Sabarmati, Ahmedabad. .....Second Party

For the first party: Shri H.B. Shah, Advocate

For the second party: Shri T.K. Mishra, Advocate
Shri R.S. Sisodiya, President,
P.R.K.P.

AWARD

As per reference order No. L-41012/12/98/IR (B-1) New Delhi dated 15-10-1998, the Appropriate Government, Government of India, Ministry of Labour, considering an Industrial Dispute exhisting between the employers in relation to the management of Western Railway and their workman, referred the dispute for adjudication to Industrial Tribunal, Ahmedabad under clause (d) of sub-section (1) and sub section 2 (A) of Section 10 of the ID Act 1947, formulating the terms of reference under the schedule as follows:-

SCHEDULE

"Whether the demand of the Paschim Railway Karmachari Parishad for affording second opportunity for training of Intermediate Apprentice Chargeman to Khem Karan D. Sharma, Mill Wright Fitter Gr.-II, Sabarmati Engineering Workshop selected for the post of chargeman against 25% rankers quota is legal and justified? If yes, then to what relief the concern employee is entitled to?"

(2) In response to notices for filing statement of claim and written statement by the parties to the reference, the union PRKP (second party) filed statement of claim at Ext. 7 and the first party Western Railway also filed written statement at Ext. 10.

(3) The case of the second party/union as per statement of claim is that the concerned workman Shri Khem Karan D. Sharma is a permanent Railway employee working as Mill Weight Fitter, Grade-II at Engineering Workshop, Sabarmati under the Chief Works Manager Engineering workshop Western Railway Sabarmati. As per notification issued by the Chief Works Manager, Sabarmati inviting application for selection of intermediates apprentices chargeman, the concerned workman Shri Khem Karan D. Sharma and other employees also applied for the post. Then four employees including concern workman Khem Karan D. Sharma were selected for the post of intermediates apprentices chargeman and the concern workman along with other 3 employees were directed for training of Apprentice chargeman at System Technical School, Ajmer. All the four employees including the concern workman reported for training at Ajmer. Further case is that there was no proper facility at System Technical School, Ajmer for imparting Civil Engineering training and so the employees of Sabarmati work shop wrote a letter to Deputy CE (W) Sabarmati that due to no proper training facility at Ajmer, it is better to give training at Sabarmati. But instead of hearing grievances of employees, Principal STC Ajmer returned back the concerned workman Khem Karan D. Sharma and one more to Dy. CE (E/W) Sabarmati. Thereafter the concern employee Khem Karan D. Sharma sent an application dated 27.12.1995 to Chief Engineer (Bridges) Churchgate, Mumbai narrating details of training as per syllabus at STS Ajmer which are not being useful for the works of engineering workshop due to imparting of training related to purely mechanical work shop and also making request for exploring the possibility of imparting the training at Sabarmati workshop only. And the concern workman also requested for revising the syllabus as per trade of Civil Engineering instead of trade of Mechanical workshop also narrating that the training imparted as STS Ajmer is not fit for him and it is a sheer waste of time. But the Railway Administration did not reply in this regard. Further case is that the concerned employee Khem Karan D. Sharma was not sent to STS Ajmer for training of intermediates apprentice chargeman and that he was not promoted as chargeman whereas his juniors were sent to training and promoted as chargman. On these scores the union has sought for the relief that Shri Khem Karan D. Sharma be sent for training and be treated senior chargeman as junior were promoted as chargeman overlooking him and that the concern workman be awarded all the consequential benefits of chargeman from the date of his junior are promoted as chargeman with further prayer for compensation for his suffering and also for cost of the suit and also for any other relief to which the concern workman is found entitled.

(4) The contention of the first party management of Western Railway as per written statement is that the reference is not maintainable and the dispute referred for adjudication is not Industrial Dispute

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as defined under section 2 (K) of I.D. Act. However the first party admitted that the concern workman Shri Khem Karan D. Sharma is permanent Railway Employee. It has also been stated that the concern workman Shri Khem Karan D. Sharma is working as Mill Wright Fitter Gr.-I under Chief Works Manager, Engineering Workshop, Sabarmati and it is not true that he is working as Mill Wright Fitter Gr. II. It has also been admitted that the concern workman Shri Khem Karan D. Sharma and 3 others were selected for the post of intermediates apprentice chargeman, scale of Rs. 425-700. Further contention is that such selection of Khem Karan D. Sharma and 3 Other were subject to passing final examination after completion of theoretical and practical training of 104 weeks. And so 104 weeks training was mandatory for qualifying for the post of chargeman. It has been denied that there was lack of proper facility for theoretical training at System ST S Ajmer for working Civil Engineering. Further contention is that the theoretical training cannot be imparted at Sabarmati workshop. Further case is that there is a schedule and syllabus of intermediates apprentice chargeman and the second party and 3 Others had been sent for training at STS Ajmer from 19.05.1985 and the concern workman Khem Karan D. Sharma has joined in the training at Ajmer for 5 days but after 5 days Khem Karan D. Sharma made request to the Principal STS Ajmer to redirect him at Ahmedabad- Sabarmati. The grievance of the second party is that there is vast difference in between training at STS Ajmer and works being performed at work workshop Sabarmati. The representation of the second party were considered and decided to the effect that the second party be directed to STS Ajmer for 50 weeks training as per schedule of training letter No. E (R & T) 890-16 (II) on 05.12.1988 and the said decision of the Railway Administration was conveyed to the second party by letter No. E-890/6/1 dated 22.12.1988. Even though the second party Khem Karan D. Sharma failed to do so. So in view of the above facts and as per proved syllabus by CEE demand/request of the second party for imparting training to Engineering/workshop Sabarmati was not agreed to and the second party was advised accordingly. It has been denied that the second party Khem Karan D. Sharma was ignored in sending for training. It is the case of the first party that the second party Khem Karan D. Sharma had left pre-selection first session training at STS Ajmer and that he did not complete 104 weeks training and did not pass the qualifying test for the post of chargmen. Whereas the juniors have already completed 104 weeks training and passed the final test for qualifying for the post of chargeman and so they have been appointed as chargeman. Further case is that the post of chargeman is a selection post and completion of 104 weeks training as per syllabus and schedule is compulsory but the second party Khem Karan D. Sharma had not completed training for selection and promotion so he is not eligible or entitled to a post of chargeman. Further contention is that the dispute about non-selection, non-promotion to charge man was raised by the second party after 13 years and so the dispute is barred by law of limitation, latches and acquisition. The second party Khem Karan D. Sharma left the training at his own will and he failed to join in the theoretical training at Ajmer and he also failed to follow the directions/instructions issued by GM (E) CCG vide letter No. E- R & T 890/16 (II) dated 05.12.1988 and letter from CWM (EW)/SBI vide No. E/890/6 dated 22.12.1988. On these grounds it has been asserted that the second party Shri Khem Karan D. Sharma is not eligible or entitled to the post of chargeman as he failed to complete training of 104 weeks as per syllabus and failed to pass final test for the post of chargeman so the second party is not entitled to get any relief in this case and the reference is fit to be rejected.

(5) In view of the pleadings of the parties the second party has submitted 13 documents as per list Ext. 9 and the 13 documents have been marked Ext. 9/1 to 9/13. The second party PRKP submitted a pursis at Ext. 12 regarding production of 8 documents by the first parties which are in the possession of the first party and those documents have been refereed in the written statement at Ext. 8 of the first party and order was passed directing the first party to comply or reply. The second party PRKP vide Ext. 15 a list submitted a document (copy of office order of 1994 dated 14.08.2004). Besides affidavit of the concerned workman Shri Khem Karan D. Sharma at Ext. 19 is filed in lieu of examination-in-chief and he was cross-examined by the lawyer of the first party. On behalf of the first party the affidavit in lieu of examination-in-chief at Ext. 20 of the management witness namely Ramesh Tolani Works Manager, Engineering Workshop, Sabarmati was filed and he was cross-examined by Shri T .R. Mishra, Advocate for the second party. On behalf of the first party 15 documents were produced through a list Ext. 21 and the documents have been marked Exts. 21/1 to

21/15. Subsequently the second party PRKP produces 5 documents under a list Ext. 23 and the documents have been marked at Exts. 23/1 to 23/5.

(6) In view of the pleadings of the parties coupled with the oral and documentary evidence adduced in this case on behalf of both sides, the following issues are taken up for consideration and arriving at decision in this case.

ISSUES

(I) Whether the reference is maintainable?

(II) Has the concern workman/second party/PRKP union has valid cause of action?

(III) Whether the reference is barred by limitation due to delay and latches in raising the Industrial Dispute?

(IV) Whether the second party workman Shri Khem Karan D. Sharma had been afforded second opportunity for training of intermediates apprentice chargeman at STS, Ajmer by the Railway Administration?

(V) Whether the grievances of the concern workman had been meted out by the first party Railway Administration when the concern workman returned back after 5 days of training at STS, Ajmer?

(VI) Whether the concern workman Shri Khem Karan D. Sharma had acquired a lawful right for being appointed for the post of chargeman without joining the training schedule as per syllabus?

(VII) Whether the concern workman has a legal right for treating him as senior chargeman on the basis of his selection for the post of intermediates apprentice chargeman scale of Rs. 425-700 (R) as per office order dated 14.06.1985 issued by the Administration of first party?

(VIII) Whether the demand made by the PRKP under the terms of reference as per schedule is legal and justified?

(IX) Whether the second party is entitled to the relief as prayed for?

(X) What orders are to be passed?

FINDINGS

(7) **ISSUE NO. IV & V**

This is admitted fact as per Ext. 9/2 letter dated 09.07.1984 that concerned workman Khemkaran D. at Sr. No.7 alongwith 13 more employees were short listed for written test for recruitment of Intermediate Apprentice chargeman and as per Ext. 9/3 office order No. 160 dated 14.06.1985 four employees including Khemkaran D. (at Sr. No. 3) were found suitable for the post of Intermediate Apprentice chargeman scale Rs. 425-700 (R). It is also admitted position that those four including workman had to undergo 104 weeks training containing 52 weeks theoretical training and 52 weeks practical training and on completion of training they have to further undergo final examination/test which was compulsory for them to pass the final test, before getting qualified for the post of chargeman. It is also not disputed that a schedule of training programme was notified and furnished to the 4 selected employees including concern workman of Sabarmati, workshop. As per Ext. 9/4 dated 02.07.1985 according to approved schedule of training-theoretical and practical-after completion of basic training of 12 weeks as STC Ajmer and for the 12 weeks training in Engineering Workshop Sabarmati, they being Apprentice chargeman were to be examined by Dy. CE (EW) Sabarmati based on their choice of groups and only those employees who passes those tests will have to be given intensive training of 38 weeks in 3 sessions at STC Ajmer and 38 weeks in Engineering workshop, Sabarmati. There was also condition in the letter dated 02-07-1985(Ext. 9/4) that the candidates who fails in the pre-selection test will revert back in their original trade. This is also admitted position that as Ext. 9/5 letter dated 16.08.1985 of Dy. CE (E/W)'s office, Sabarmati 4 selected candidates Intermediate Apprentice Chargeman namely 1- Harisaran S., 2- Banwarilal, 3. Khemkaran D (Concern workman) and 4. Kantilal M (S.C.) were relieved on 17.08.1985 (AN) directing them to report the Hostel Warden S.T..S. Ajmer on 18.08.1985 for receiving theoretical training of first school session of Intermediate Apprentice chargeman. Further as per Ext. 21/1 dated 24.05.1983 from G.M. (E) CCG Addressing to Dy. CE (EW) Sabarmati, it was intimated regarding approval by CBE as to the schedule of training and syllabus of Intermediate Apprentice chargeman. Ext. 21/4 is the schedule of training and syllabus of intermediate Aprentice chargeman scale Rs. 425-700 (R) Engineering workshop Sabarmati. As per schedule total period of training was 104 week in which Training as S.T.S. Ajmer was 12 week pre-selection training then 12 week pre-selection training at Engineering workshop Sabarmati then 38 weeks post selection training at S.T.S. Ajmer and then 38 weeks post selection practical training as Engineering Workshop Sabarmati. Thus training at S.T.S. Ajmer was 50 weeks and at Eng. Workshop Sabarmati. 50 weeks-total 100

weeks and 4 weeks were provision of leave and thus total training at Ajmer and Sabarmati was 104 weeks.

(8) As per of the evidence of the S.P. workman Khemkaran D. at Ext. 19 he joined the theorutical training (pre-selection training) at System Training School Ajmer as per direction (Ext. 9/5) and participated in training for 5 days only. From perusal of Ext. 21/5 the zerox copy of application dated 23-08-1985 of the S.P. workman Khemkaran D. addressing to the principal system Training School, Ajmer he (concerned) workman showed inability to continue training here due to hard syllabus and requested to the principal sent him back to Engg. Workshop Sabarmati, so that he may manage for his entire training at Sabarmati. Then as per Ext. 21/6 the principal S.T.S. Ajmer vide letter dated 23-08-1985 addressing to Dy. CE (E/W) Sabarmati to the effect that Khemkaran D. and Kantilal M. Intermediate Apprentice chargeman have expressed inability to continue schedule training here and so they are being sent back. The second party produced his application/letter dated 26-08-1985 written in English to Dy. CE (EW) S.B.I marked Ext. 9/6. Ist party has produced letter dated 26/27-08-1985 written in Hindi by Khemkaran to Chief Engineer Bridge, Churchgate, Mumbai. As per Ext. 9/6 Khemkaran requested to Dy. CE (E/W) S.B.S. for arranging his training at Sabarmati Workshop. As per Ext. 21/7 Khemkaran D. and Kantilal M. Jointly written letter to Chief Engineer Bridge, Churchgate, Mumbai through Add. Chief Engineer that their training be arranged at Engg. Workshop Sabarmati in order to prove their ability since training at Ajmer as per syllabus is out of course not learnt by them. Ext. 9/7, 9/8, 9/9, 9/10, 9/11 are letters of Khemkaran D. dated 27-12-1985,17-03-1986,13-05-1987, 29-06-1987 and 15-05-1989 addressed to Dy. Chief Engineer, Chief Engineer Bridge Churchgate, Mumbai, Dy. Chief Engineer, Engg. Workshop, Sabarmati and Chief Works Manager Engg. Workshop, Sabarmati making request and representation as to change of venue of his training from Ajmer to Sabarmati and also the change the approved syllabus for him that suited to him. The worksman all those letters/representations are regarding his personal grievance against theoretical training at S.T.S. Ajmer as per syllabous. The Western Railway Mazdoorsangh in its letter dated 21-05-1990 through Secretary (Ext. 9/12) highlighted personal grievances of Khemkaran D. that he is not science student and the training imparted at STS Ajmer is not suited to him. Then as per letter dated 15-03-1991 of General Manager Head Quarter Office, Churchgate, Mumbai (Ext. 9/13) addressed to General Secretary W.R.M.S. intimating that 50 weeks theoretical training is prescribed at STS Ajmer as per syllabus and also intimating that Shri Khemkaran D. and Kantilal were selected as Intermediate mechanic from Artison category and theoretical training for them is given only a STS Ajmer as per syllabus and not in Engg. Workshop Sabarmati. As per such intimation it was made known to . the workman Khemkaran D. that theoretical training for intermediate Apprentice chargeman can only be imparted at STS Ajmer and not at other place. It is also remarkable to note that as per letter dated 18-10-1985 (Ext. 21/8) the Dy. CE (EW) Sabarmati on showing unwillingness to undergo theoretical training at STS Ajmer and reported back on 27-08-1985 they were posted back to their original posts as requested by them and the copy of this letter was also sent to the principal STS Ajmer and ACME Ajmer. As per letter dated 06-06-1987 (Ext. 21/10) of Dy. CE (E/W)'s office Sabarmati addressing to Khemkaran D, it was made known to him (workman) that as per schedule of training approved and laid down by CBE/CCG . Vide letter dated 24-05-1983 Intermediate Apprentice chargeman has to take training at Ajmer and SBI workshop. It was also intimated to him that there is no relevance of your referring the practice followed in the signal workshop, Sabarmati. From the letter dated 21-09-1987 of Dy. CE (E/W)'s office, Sabarmati addressed to CE (E) (CCG) (Ext. 21/12) intimating that Khemkaran D. showed unwillingness to undergo theoretical training at STS Ajmer, whereas presently two candidates (1) Harisaran S.and (2) Banwarilal M. are undergoing training 104 weeks. It has been further intimated about main grievance of concern workman Khemkaran D. that theoretical training at STS Ajmer being pertaining to the science and mathematics. So request was made to sought for approval of competent Authority whether request of Khemkaran to undergo theoretical training (which is part of training in syllabus) in any other workshop where such facilities are available may be considered as no facilities of theoretical training are available in the workshop at Sabarmati. Then General Manager (E) Churchgate Mumbai vide letter dated 05-12-1988 (Ext. 21/12) intimated to Dy. CE (E/W) Sabarmati in reference to letter dated 21-09-1987 that it has been decided that Shri Khemkaran D. may be directed to STS Ajmer for 50 weeks theoretical

training as per schedule of training and syllabus of Intermediate Apprentice chargeman. Then through the letter dated 22-12-1988 of CHM (EW)'s office, Sabarmati (Ext. 21/4) S.S. (MW) Sabarmati was intimated to inform Khemkaran D. Fitter Gr. II in connection with his letter dated 29-06-1987 (Ext. 9/10-21/11) reproducing copy of GM (E) CCG Letter dated 05-12-1988. The management witness Ramesh Tolani during cross-examination has stated that there is no documentary proof that Khemkaran D. was informed about letter Ext. 21/10 that Intermediate Apprentice chargeman has to take training at Ajmer and S.B.I Workshop and also informing about no relevance to refer the practice followed in the signal workshop Sabarmati. In this connection management witness vide para 29 during cross-examination has stated that the candidate selected through R.R.B. possess technical Diploma or Degree and so they are given training at Sabarmati whereas from ranker's quota or promotion quota training is must. So it is quite admitted position that the candidates selected from 25% ranker's quota are required to undergo theoretical training at STS Ajmer and practical training at Engg. Workshop Sabarmati. So candidate from rankers quota as in the case of workman Khemkaran D. cannot equate himself with that of selected candidate through R.R.B. who possess technical Diploma or Degree.

(9) It is clear that as per pursis of S.P. at Ext. 12 for production of 8 letters/documents by 1st party those were also produced by the first party as per Ext. 21 (list) from Ext. 21/1 to 21/15. As per order dated 06-09-2000 of the tribunal on Ext. 12, the 1st party had complied with by production of document.

(10) The S.P. (Union) has produced letter Ext. 15/1 dated 14-08-2004 office order No. 94 of CWM (EW)'s office Sabarmati regarding Training of Intermediate Apprentice J .E. II in system training center Ajmer whereby candidate from this category was to undergo 9 months theoretical training at Ajmer and 9 months practical training at Engg. Workshop Sabarmati. This does not go to help workman Khemkaran D. in any way because he had been selected from ranker's quota for Intermediate Apprentice chargeman and not for Intermediate Apprentice J.E. II.

(11) Four documents produced by the 1st party on 27-01-2005 are not relevant documents for this case since those are concerning Bank's service, pay scale, rules and regulations. Those are redundant documents in present case and so no exhibits number were given on producing such documents.

(12) Ext. 21/15 is office order No. 135 dated 13-12-2005 regarding position of staff retiring in this year 2006. Engg. Workshop Sabarmati. The name of workman Khemkaran D. is at Sr. No. 7 Designation J.E.-II scale 5000—8000 date of retirement on 30-09-2006 with other details. So admittedly workman Khemkaram D. retired on 30-09-2006 from the post of J.E. II (PLR). As per evidence of management witness at Para 32 (Ext. 20) Khemkaran was given promotion to the rank of Junior Engineer on the basis of his seniority as per Ext. 23/2. From perusal of Ext. 23/2 he was given promotion against existing vacancy of J .E. II in the scale Rs. 4500—7000 (RSPD) with Spl. Pay Rs. 100 pm. It has been also incorporated that above adhoc promotion is provisional subject to outcome of court/CAT cases if any.

(13) The two letters Ext. 23/3 and 23/4 are important for discussions and has to be examined whether workman Khemkaran D. selected from rankers quota as Intermediate Apprentice chargeman had been given 2nd time opportunity to receive modified theoretical training of 3 months. 3 months each in the year 1994. As per evidence of management witness at para 31 (Ext. 20) he does not know that there is any time factor forgiving promotion to staff who refuses promotion. He (MW) vide para 31 stated that the Deptt. issued order in the year 1987 for sending workman Khemkaran D. for training at Ajmer. But no any documentary proof has been produced. Ext. 23/3 is letter dated 28/28-03-1994 from principal STS Ajmer to CWM, Engg. Workshop, Sabarmati on the subject training to Intermediate Apprentice Chargeman. It was informed to extend necessary assistance for deputing some staff for teaching the theoretical course of 3 days of STS Ajmer for aritsan staff of Engg. Workshop Sabarmati. It was also intimated to prepare syllabus at SBI end asking to send syllabus and advise acceptance so that training of staff of Engg. Workshop Sabarmati could be accorded for the theoretical training of 3 months each. It was informed that presently 1st theoretical session (i.e. 4 sessions of 3 months each) for App. Mech/Txr/Elect. has been tentatively prepared from up to December 1994 at STS Ajmer. Ext. 23/4 is another letter of principal STS Ajmer dated 2-04-1994 on the subject training Intermediate App. Chargeman scale Rs. 1400—2300 (RP) addressed to the chief works manager Engg. Workshop, Sabarmati. This is with reference to D.O-Letter No. E890/6/1 dated

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09-04-1994 of CWM. S.B.I and telephonic talk made by PSTS Ajmer with WM SBI on 20-04-1994. It has been informed by PSTS Ajmer that STS Ajmer is already overloaded with 5 sessional courses of various wings and groups every month with skeleton of teaching faculty members and so there is no scope of adjustment of Inter. Apprentice Chargeman of Engg. Workshop, Sabarmati by providing separate course. However it was intimated that separate course of training to Inter. App. Chargeman of Engg. Workshop Sabarmati has been planned in 2nd session in the month of August to October 1994 and so Inter Appre. Chargeman may be accepted for 2nd session, and onwards on the following condition-(a) it may qualify 1st session before August-1994 by conducting condensed course of 2months during June-July-1994, b) after pressing out 1st session, these trainees will to continue here at S. T.S Ajmer along with regular course trainees of 1st session followed by III & IV session as planned, (c) An officer or senior supervisor may be deputed for the subjected special topic for Engg. Workshop training as we don't have any teaching faculty member to undertake such subject. It was also intimated for taking approval of H.Q. for the conduct of condensed course and deputation of Engg. Branch teaching faculty members to enable as to plan for the course accordingly and call letter is issued.

(14) From these documentary evidence provided on behalf of union (S.P) it has come into picture clearly that for imparting theoretical training to the selected candidates as Intermediate Appre. Chargeman special and condensed course of training of 3-3 months was to be provided instead of 104 weeks training including 50 weeks theoretical training at STS Ajmer as per schedule syllabus of G.M. (E) CCG's dated 24-05-1983 (Ext. 21/4). So, now it was on part of 1st party No.1 chief works manager Engg. Workshop, Sabarmati to take action accordingly to send selected Intermediate Apprentice chargeman including the concern workman Shri Khemkaran D. Sharma to take training through condensed course of 2 months and then special training of 3 months each of 2nd, 3rd and 4th session of STS Ajmer. There is no evidence even of M. W. Shri Ramesh Tolani (vide Ext. 20) that the second party had been afforded second opportunity for training of Intermediate Apprentice chargeman according to the letter of principal STS Ajmer (Ext. 23/3 and 23/4). No any document has been produced to show that 1st party had extended second opportunity to the concern workman by issuing order for joining special training course meant for selected candidate from Engg. Workshop Sabarmati. It is also proved that in the year 1994 concern workman Shri Khemkaran D. Sharma was well continuing at Engg. Workshop, Sabarmati and the office order No. 160 dated 14.06.1985 (Ext. 21/3) had not been superceded so far as selection of Khemkaran D. as Intermediate Appr. Chargeman was concerned. But even then the grievance of the concerned workman was not meted out by the Western Railway Administration (1st party) when the concern workman returned back after 5 days of theoretical training at STS Ajmer when at that time he had to undergo 50 weeks theoretical training at Ajmer as per course and syllabus of 1983 (Ext. 21/4) where the concern workman was agitating his grievance through series of representation and eventually when in the year 1994 it has been decided to impart condensed course of two months and special training of 3 months each at Ajmer then it was incumbent on part of 1st party to send the concern workman for training second time but the 1st party failed in this regard and the workman Khemkaran D. Sharma had suffered in getting the intermediate Appr. Chargeman scale of 1400-2300 (R.P) in the year 1994.

(15) As per discussion made above, I find and hold that second party workman Shri Khemkaran D. Sharma was not afforded second oppourtunity for training of Intermediate Appr. Chargeman at STS Ajmer as per modified training schedule of two months condensed course and followed by 3 months each of 3 sessions of training as per letter of PSTS Ajmer (Ext. 23/3 and 23/4). I further find and hold that the grievances of the concern workman had not been meted out by the 1st party Western Railway Administration when the concerned workman had returned back after 5 days of training at STS Ajmer and was along waiting for second time sending him for taking training at Ajmer until his retirement in the year on 30.09.2006. Thus the 1st party denied opportunity to Shri Khemkaran D. to get scale of chargeman in the year 1994. Thus issue No. IV & V are decided against the 1st party.

(16) **ISSUE NO. VI**

In view of the findings given in the foregoing paras while deciding issue No. IV & V. I further find and hold that the second party (workman Khemkaran D. Sharma) has had acquired a lawful right for being appointed for the post of chargeman without joining the training schedule

as per modified condensed course and special training schedule from June, 1994. This issue is decided in favour of second party accordingly.

(17) **ISSUE NO. VII**

In view of the findings given in the foregoing paras while deciding .issue No. IV, V & VI, I find and hold that the workman Shri Khemkaran D. Sharma has legal right for treating himself as chargeman and getting that scale from June 1994. But he has no legal right for claiming himself as senior chargeman on the basis of his selection for the post of Intermediate Apprentice chargeman as per office order dated 14-06-1985 when he had failed to complete course training of 104 weeks as per Ext. 21/4 and so the concern workman Khemkaran D. cannot claim seniority over the chargeman appointed earlier after successful completion of 104 weeks of schedule training from the year 1987 and onward upto may 1994. But certainly a legal right had been acquired by him in not sending him for special training schedule from June 1994 and onward up to his retirement on 30-09-2006. So certainly candidates selected after June, 1994 as Intermediate Appr. Chargeman and sent for training under condensed course and special training schedule of 3 months each at STS Ajmer or at other training Centre including Engg. Workshop, Sabarmati and thereafter on completing training their appointment as chargeman, shall have no claim of seniority over the second party workman Shri Khemkaran D. Sharma. This issue is decided accordingly.

(18) **ISSUE NO. I. II & III**

In view of the finding to issue Nos. IV, V, VI & VII is the foregoing, I find and hold that the reference is maintainable and the concern workman/second party union PRKP has valid cause of action to raise Industrial Dispute and that the reference is not barred by limitation due to any delay and latches in raising the Industrial Dispute.

(19) **ISSUE NO. VIII**

As per findings given in the foregoings, the demand made by PRKP in this reference as per schedule is legal and justified to the extent regarding denying second opportunity for training of Inter. Appre. Chargeman to Khemkaran D. Sharma, then Mill write fitter Gr. II, Sabarmati Engg. Workshop as per finding to Issue Nos. IV, V, VI& VIII given from para 7 to 17.

(20) **ISSUE NOs. IX & X**

In view of the findings above, the second party (workman Khemkaran D. Sharma) is entitled to be treated as Chargeman from June, 1994 for getting scale of chargeman from that period, and he is entitled to get seniority from that period and to get consequential/monetary benefit. The first party are directed to calculate/workout the monetary benefits of the workman Khemkaran D. Sharma since retired on 30-09-2006.

The reference is allowed in part accordingly. No order as to cost.

The 1st party are directed to comply with this order/ direction within two months from the receipt of copy of award, failing which the calculated/worked out amount of monetary benefits will also carry interest @ 9% per annum.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 17 अक्तूबर, 2012

का.आ. 3383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **बी सी सी एल** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 2, धनबाद** के पंचाट (**आई डी संख्या 133/1996**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **17-10-2012** को प्राप्त हुआ था।

[सं. एल-20012/364/1995-आई आर (सी-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 17th October, 2012

S.O. 3383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/ 1996) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL, and their workman, which was received by the Central Government on 17-10-2012.

[No. L-20012/364/1995-IR (C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under section 10(1)(d) of the I.D. Act., 1947

Reference No. 133 OF 1996

Parties: Employer in relation to the management of Lodna Area of M/s BCCL and their workman.

Appearances:

On behalf of the workman: Mr. S.C. Gaur, Ld. Adv.

On behalf of the Management: Mr. D.K. Verma, Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 4th Sept. 12

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/364/95-IR (Coal-I) dt. 1-11-1996.

SCHEDULE

"Whether the demand by the Union, for employment of Smt. Girija Devi W/o Late Ishwar Dusadh under NCWA provisions by the Management of Jairampur Colliery of M/s B.C.C.L. is legal and justified? If so, to what relief is the workman entitled?"

2. The case of petitioner Smt. Girija Devi as sponsored by the Union concerned is that here late husband Ishwar Dusadh, the Ex. Hard Coke Trammer of Jairampur Colliery suddenly fell ill and showed signs of insenity, so he was taken to Ranchi for his treatment under Dr. B.N. Chakravarty of Ranchi Mansik Arogyashala, Kankee, Ranchi, where he died on 7-1-1988 while in service. After two months of his death, the Management of Jairampur Colliery illegally dismissed him as per its order dt. 10-3-1988. She as dependant of her deceased husband is entitled to secure employment under clause 9.4.02 of the N.C.W.A. The alleged domestic enquiry was unfair and improper, as not notice of enquiry was served upon the the workman concerned, rather it was held mechanically and against the principle of natural justice, despite all the informations of the workman's illness and precarious condition to the Management. Though here representation dt. 8-1-1993 was regreted by the Management as per its letter dt. 28-8-1993 about her no entitlement to employment, as he was dismissed from his service. She demanded as per her representation dt. 27.9.1993 to the General Manager, Lodna Area, for her employment, but the action of the Management was arbitrary and unjustified.

At last, the failure of the conciliation proceeding raised by the Union before the ALC(C), Dhanbad due to rigid attitude of the Management resulted in the reference for adjudication. The demand of the Union is quite legally justified.

3. The Union in its rejoinder with categorical denials has pleaded that workman Late Ishwar Dusadh had worked till 03-08-1987. The enquiry was quite mere formality. The mental illness and the long treatment of the workman was duly informed by the Union, the petitioner (wife of the workman) to the Management. The ground of delay and laches are baseless. The identification of the petitioner as per the certificate of the BDO, Arrah (Bhojpur) and the Mukhiya was already accepted by the Management, and other documents unchallenged.

4. Whereas specifically denying the case of the Union, the Management has pleaded that the workman named Ishwar Dusadh at Jairampur Colliery had abandoned his service from 22-12-1986. So he was issued the charge sheet after one year of his abandonment of service. At the departmental enquiry fairly held by the P.K. Singh, Sr. Personnel Officer, Jairampur Colliery, as the Enquiry Officer into the chargesheet in accordance with the rules of natural justice, after serving necessary notices and widely publishing it in the local newspaper, he submitted his enquiry report that the workman was unauthorisedly absenting from his duty without any due course.

The Management as per letter dt. 7-3-1988 dismissed the workman from his service, as he never turned up for his duty since his abandonment of his service. It was published in the Local Newspaper having wide circulation. But the sponsoring Union after more than seven years put the demand for the employment of Smt. Girija Devi as the dependant wife of the workman, stating the death of the workman in Jan., 88. No industrial dispute can be raised by the Union after death of the workman, for neither the lady was ever a workman of the company nor the workman was a member of the Union. The N.C.W.A. provides for employment to the dependants only on compassionate ground for the interest of the workman's family members and it has provided for monetary compensation to the widow of deceased workman of certain cases, but the Lady petitioner having no genuity of herself and medical certificate of the workman's death has no right to claim for employment. At present, due to surplus manpower the company has introduced voluntary scheme to reduce the strength of workmen by paying heavy amounts to them; so it has been too impossible for the management to consider the cases of Ladies for employment.

5. Further the Management in its rejoinder has pleaded that the Lady petitioner has procurred the fabricated certificate indicating the death of the workman on 7-01-1988 with a view to make out the present case. The conciliation failed for unreasonable and illegal demand of the Union. The petitioner is not entitled to any relief.

6. **FINDING WITH REASONING**

In this case, WWI Girja Devi, the petitioner herself on behalf of the Union, and MW I Kumar Manoj, Dy.

Personnel Manager, Jayrampur Colliery for the Management have been examined.

Mr. S.C. Gaur, Learned Advocate for the petitioner Girja Devi has submitted that her husband Ishwar Dusadh was an employee in Hard Coke Ovens of Jayrampur Colliery, but he died in January, 1988 for which the Company had also given Rs. 3,000 for his funeal ; when she submitted her application with all original documents for her employment, the Company as per letter (dt. 28.3.93 - Ext. W.1) rejected her prayer for employment. Her further statement is that her husband had neither left her service, so his dismissal from service after an alleged enquiry was quite wrong. Here the fact of payment of Rs. 3000 by the Company for the funeral expenses of the deceased workman is unpleaded, so its oral evidence is inadmissible. Moreover, she could not proved any information of whereabout of her husband or of his death to the Management. Mr. Gaur Ld. Advocate for the petitioner, relying upon the authority 2011(4) JLJR 161 (SB), United Coal Workers, Union Vs. Union of India, as submitted as held therein, that Ramesh Chandra Working as Sr. P.A. at the General Manager's Office, Kathara Area of M/s CCI was arbitrarily dismissed by the Management without service of a notice/a chargesheet upon him about any enquiry while he was suffering from bone T.B. and he was on leave from December, 1984; the Tribunal upheld that the petitioner was not entitled to any relief,but the Hon'ble High Court concerned set aside the order of the Tribunal observing no person can be considered and no order prejudicially affecting a person can be passed by a Public Authority without affording him reasonable opportunity to defend himself and represent his cause (Paras 10, 11, 14 & 18).

7. Mr. D.K. Verma, the Learned Advocate for the Management contended that workman Ishwar Dusadh began to unauthorisedly absent from his duty since 22-12-1986, for which he was on 7-3-88 dismissed after due department enquiry; but after lapse of seven years, his widow (Petitioner) applied for her employment in his place, on the ground of dismissal of her husband as per the Management's letter (Ext.M.1). It is further argued on his behalf the management that said ruling is inapplicable to the case in view of the terms of the reference because the evidence of MWI Kumar Manoj, Dy. Personnel Manager concerned reveals that when Ishwar Dusadh worker of Jayrampur colliery began to absent from Dec., 1986, he was chargesheeted as per the chargesheet (dt. 22-12-87) (Ext. M.I.), but no reply of the chargesheet received; so the Enquiry Officer was appointed as per letter dt. 13-01-1988 (Ext. M.2), he sent him the letters dtd. 13.1.88 and 23-1-1988 (Ext.M.3/1 and 3 respectively) of Enquiry Notices by Regd. Post as also published in the Daily (Mark X for identification) for his participation in the enquiry proceeding as per its record (Ext. M-4) at the Enquiry Report (Ext. M.5) of the Enquiry Officer S.N. Tiwary, the workman was dismissed as per the dismissal letter of the Competent Authority S.N. Tiwari (Ext.M.6) and the notice of his dismissal was published in the Newspaper (Marked Y/1) as per the letter for its publication (Marked Y). The MWI has established in cross examination that Girija Devi (Petition) has not given any information, rather she gave the information of her husband's death to the Management after seven years in the year 1993. He has admitted that the N.C.W.A. provided for employment of the dependant (of an employee) by the Management if the employee dies during the service period.

8. On consideration of the aforesaid materials available on the case record, I find that the Reference involves an incidental issue to it whether the deceased workman died in course of his employment of died after his dismissal.

In this case, the Lady petitioner has orally proved the death of her workman husband in January 1988 (07-01-1988) as revealed in the cross examination of MWI, whose evasive reply to the question about the dismissal of the workman from his job after two months of his death on 07-01-1988 amounts to an affirmative admission of it. At the exparte enquiry into the chargesheet dt. 22-12-1987 for his unauthorised absent from 22-12-1986 (Ext. M.1), he was dismissed from service w.e.f. 10-03-1988 as per the Dismissal letter dt. 07-03-1988 of the Colliery Agent (Ext. M.6) but it lacks any proof of its service except its publication in a daily (Mark X/1 for identification). Besides that, the Enquiry Notices (Ext. 3, & 3/1) has no proof of any service served, unserved or returned, upon the workman. Their all the aforesaid facts conclusively prove that the workman expired during the tenure of his service, so his alleged dismissal seems infructuous. Therefore, the Management's letter dt. 28-08-1993 (Ext.W.1) refusing her employment on the score of the alleged dismissal of her deceased husband for his unauthorised absence is unsustainable.

9. In result, it is hereby awarded that the demand of the Union for employment of Smt. Girija Devi (petitioner) W/o Late Ishwar Dusadh under N.C.W.A. provision from the management of Jairampur Colliery of M/s BCCL is quite legal and justified. Since the workman died during the continuity of his service, no question arises for a relief to him rather in view of the nature of the case, the petitioner is entitled to her employment in place of her deceased workman husband as per the rules of the N.C.W.A.

The Management is directed to implement the Award with a month from the date of its receipt after its publication in the Gazette of the Government of India.

KISHORI RAM, Presiding Officer.

4073 4012-32

नई दिल्ली, 17 अक्तूबर, 2012

का.आ.3384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (आई डी संख्या 142/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2012 को प्राप्त हुआ था।

[सं. एल-20012/278/2000-आई आर (सी-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 17th October, 2012

S.O. 3384.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 142/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL, and their workman, which was received by the Central Government on 17-10-2012.

[No. L-20012/278/2000-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

Present

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 142 OF 2000.

PARTIES: Employer in relation to the management of Sijua Area of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman: Mr. N.G. Arun, Union Rep.;

On behalf of the Management: Mr. D.K. Verma, Ld. Adv.;

State : Jharkhand Industry: Coal

Dhanbad, the 24th September, 2012.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/278/2000(C-I) dt. 25.10.2000.

SCHEDULE

"Whether the action of the management in not regularising Shri Jay Ram Prasad as Dumper Driver in Gr. 'D' w.e.f. 1-2-1991 is justified? If not, to what relief is the concerned workman entitled?"

2. Neither Mr. N.G. Arun, the Union Representative nor the workman Jay Ram Prasad present nor any witness for the evidence of the workman produced despite several opportunities for it. Mr. D.K. Verma, the Ld. Advocate for the management is present.

Perused the case record. It reveals that the case has been pending for the evidence of the workman since 6-12-2010, for which three Regd. notices dt. 6-12-2010, 22-11-2011 and 30-07-2012 were issued to the General Secretary, Rastriya Colliery Mazdoor Sangh, PO & Distt.: Dhanbad on the address noted in the Reference. The present Reference relates to an issue of regularization of the workman as Dumper Driver in Gr. D w.e.f., 01-02-1991 but the conduct of the Union Representative as well as the workman shows their unwillingness or disinterestedness in pursuing the case. This is the oldest case of the year 2000. Hence the case is closed and accordingly, order is passed as on existence of the industrial dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली, 17 अक्तूबर, 2012

का.आ.3385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार शैफएयर फलाइट केटरिंग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, मुम्बई के पंचाट (आई डी संख्या CGIT-2/6 of 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2012 को प्राप्त हुआ था।

[सं. एल-20013/4/2012-आई आर (सी-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 17th October, 2012

S.O.3385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/6 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of M/s. Chefair Flight Catering, and their workman, which was received by the Central Government on 17-10-2012.

[No. L-20013/4/2012-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

Present

K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT -2/6 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. CHEFAIR FLIGHT CATERING

Sr. Manager

M/s. Chefair Flight Catering

A Division of Hotel Corporation of India Ltd.

Sahar Airport

Chatrapati Shivaji Terminus

Mumbai-400099.

AND

THEIR WORKMAN.

Shri M. D. Khandagale

Room No.143, Korba Mithagar

Laxman Wadi Wadala (E)

Mumbai-400 037.

APPEARANCES:

For The Employer — Mr. S. V. Alva, Advocate.

For The Workman: — Mr. M.A. Sheikh, Advocate.

Mumbai, the 10th August, 2012

AWARD PART-II

The second party workman has filed his statement of claim at Ex-U-1 before the Third Labour Court, Mumbai. According to him, he was employed with the first party as a Sweeper since November 1979. He was transferred to Transport Department to work as a Driver as he was having valid driving license. He was working there till the date of his dismissal by order dated 15-7-1993. The first party issued charge sheet dt 29-10-1992 to the second party workman for the allegations for unauthorized absence from work for 69 days during Sept. 1991 to Sept. 1992 and issued second charge sheet-cum-suspension order dated 01-03-1993 for alleged misconduct of moral turpitude only on the basis of police information. As he was arrested by police, he was unable to resume his work. According to him both the charges are false. After release on bail he attempted to resume his work but he was suspended pending inquiry.

2. There was farce of inquiry and on the basis of perverse findings of the Inquiry Officer, the workman was dismissed from service from 15-07-1993. The appeal of the workman was also dismissed by the first party. Therefore the workman approached ALC (C) Mumbai. He has issued notice to the other side and conciliation proceeding was started. However they abruptly stopped the conciliation proceeding by saying that State Government is the appropriate Government. Therefore the workman approached the authority of State Government. As conciliation failed the reference was sent to the Third Labour Court, Mumbai for determination of the justness of dismissal of the workman. Workman has prayed that the charge-sheets dt. 29-10-1992 and 01-03-1993 be declared as illegal, bad in law, absurd and untenable under the law. He also prays that inquiry and findings of inquiry officer be declared unfair and the same be set aside. He also prays that the punishment of his dismissal from service be set aside.

3. The first party company resisted the statement of claim vide its written statement at Ex-C-4. According to them, the workman was unauthorizedly absent for 69 days during September 1992 to September 1993. Therefore first charge sheet was issued to him. Subsequently the management came to know that the second party workman was arrested by Police for the charge of immoral act of raping a girl. Therefore he was charge-sheeted for serious misconduct of moral turpitude. According to them the inquiry was fair and proper and there is sufficient evidence against the workman. Therefore after hearing him, he was dismissed from the services. The said order of dismissal is just and legal. Therefore they pray that the reference be rejected.

4. The 3rd Labour Court decided the preliminary issues of fairness of inquiry and perversity of findings of the inquiry officer in favour of the second party. The Presiding Officer held that the inquiry was not fair and proper and the findings of the Inquiry Officer were perverse. The first party vide their application Ex-28 have raised the point of appropriate Government and the jurisdiction of the 3rd Labour Court, Mumbai of State of Maharashtra. The 3rd Labour Court had rejected the application.

5. The first party had challenged the said order in Writ Petition no. 9724/2011. In the said writ petition Hon'ble High Court passed the order by consent and directed the 3rd Labour Court, Mumbai to transfer the reference to this Tribunal to hear further the reference from the stage where the 3rd Labour Court, Mumbai heard the inquiry and recorded the evidence.

6. In this matter the Third Labour Court by its award dt. 27-10-2010 decided the issues nos. 2 and 3 and held that the inquiry against the second party was not fair and proper. He also declared that findings of the inquiry officer are perverse. The award is on record at Ex-O-7. After the

Part-I award, the issues are re-casted as follows:

Sr. No.	Issues	Findings
1.	Whether first party has proved the charges against the second party ?	Yes.
2.	If yes, whether the punishment of dismissal is shockingly disproportionate ?	No.
3.	Whether the workman is entitled to be reinstated with back wages ?	No.
4.	What order ?	As per final order.

REASONS

Issue no.1:—

7. First party in this matter has filed affidavit of Shri B.H. Kale working as a Dy. Manager (Personnel). His evidence on affidavit is at Ex. C-30. In his affidavit he says that, the second party was absent without any intimation. He says on oath that the workman was absent on the dates shown in the charge sheet. He further says that attendances of employees are recorded in the punching cards and the relevant punching cards from September, 1991 to February 1993 are filed on record. He further says that second party had not taken prior permission from the departmental head nor had given any intimation to the Time Office or submitted any medical certificate for the said period shown as unauthorized absence. He is deposing on the basis of punching card of the relevant period. He further says that the second party was also absent from duty from 11-09-1992 till the date of issuance of charge sheet dt. 29-10-1992. The first party has also produced on record the inquiry papers with list Ex.C-5.

8. In this respect the fact is not disputed that the workman could not attend his duties especially for the period when he was arrested and kept behind bars for several days. According to the workman he has given intimation and had applied for leave. However this version of the workman is unacceptable as neither he was supposed to come to office to give intimation or to apply for leave. In short, the version of witness Mr. Kale is well supported with the circumstances on record that workman was admittedly arrested by the police for the offence of kidnapping a minor girl and for committing rape on her. Though the reasons of absence are beyond the control of the workman, it was his bounding duty to apply for leave or at least he ought to have given intimation to the Time Office about his absence. No such intimation was given. Therefore the first charge sheet dated 29-10-1992 was served on him. The charges of unauthorized absence cannot be called baseless or false as workman was infact absent as he was kept behind bars on the charges of kidnapping and committing rape on a minor girl. In short, conclusion can be arrived at that the first party has proved the charges of unauthorized absence for 69 days.

9. In respect of the other charge that workman has committed an offence relating to moral turpitude. In this respect the Ld. Adv. for the second party workman submitted that the said charge sheet was served on the workman merely on the basis of FIR. According to him the allegation against the second party workman of kidnapping and rape were false and workman has no concern with the same. He further submitted that the workman was acquitted by the Sessions Court for the offence punishable U/s 363, 376 IPC. Therefore Ld. Adv. submitted that the charges levelled by the second charge sheet do not survive as workman was acquitted by the Sessions Court. He further submitted that the act of alleged offence has not taken place at the workplace or while performing the duty. Therefore the charge of moral turpitude does not survive. In support of his argument Ld. Adv. resorted to Apex Court ruling in Glaxo Laboratories (I) Ltd. V/s. Labour Court, Meerut & Ors. 1994 I LLJ 16 SC wherein the Hon'ble Apex Court in respect of other act of misconduct other than standing orders observed that:

"The contention that some other act of misconduct which would perse be an act of misconduct though not enumerated in the standing orders can be still punished must be rejected. "

In para 11 of the judgment the Hon'ble Apex Court further observed that:

> "Therefore keeping in view the larger objective sought to be achieved by prescribing condition of employment in certified standing orders, the only construction one can put of CL .10 is that the various acts of misconduct therein set out would be misconduct for the purpose of S.O.22 punishable under S.O.23 if committed within the premises of the establishment or in the vicinity thereof: "

10. The Id.. adv. for the second party also resorted to Calcutta High Court ruling in Amit Biswas V/s. State of West Bengal & Ors. 2007 II CLR 1004. In that case the workman therein was suspended as offence was registered against him under Section 498 A IPC and remained in jail for more than 48 hours. However in that case also Hon'ble Court observed that;

> "Suspension during that period not mandatory unless such criminal charges were related to his official duties and/or involve high moral turpitude on his part."

11. In both the above referred cases, the workmen therein were not involved in a case relating to high moral turpitude of the respective workmen. Therefore ratio laid down in both the rulings are not attracted to the facts of the present case as workman herein was involved in a case

relating to high moral turpitude. He was booked and arrested for an offence of kidnapping a minor girl and committing rape on her. The offence is related to high moral turpitude. Therefore it is not necessary that such act or offence is required to be committed at the work place or in the vicinity.

12. The Ld. adv. for the second party further submitted that the workman was acquitted by the Sessions Court in the criminal case of kidnapping and rape. Therefore he submitted that the charge sheet of moral turpitude filed against the workman by the management does not survive. In support of his argument Ld. Adv. resorted to Andhra Pradesh High Court ruling in R.K.Ramju V/s. Regional Manager, APSRTC, Nalgonda & Ors. 2001 II CLR 570 APHC wherein the workman was acquitted from the case of rash and negligent driving and causing death of a cyclist. The departmental proceeding was also going on. The Hon'ble Court in this respect observed that;

> "Since rash and negligence on the part of the Driver in the driving of vehicle and/or his driving of the vehicle did not stand proved in the criminal case, the question of appellant causing any damage to the reputation of the Corporation does not arise."

In that case also the offence was not relating to moral turpitude therefore ratio laid down in this ruling is also not attracted to the set of facts of the present case.

13. On the other hand the Ld. Adv. for the first party resorted to Apex Court ruling in M. Paul Anthony Vs. Bharat Gold Mines Ltd. 1999 I CLR 1032 wherein Hon'ble Apex Court observed that;

> "....It is possible that a person can be found guilty of commission of misconduct despite his acquittal in the criminal trial."

In this respect I would like to point out that in criminal trial the charge has to be established beyond reasonable doubt whereas in the departmental inquiry preponderance of probability suffice the purpose. Therefore acquittal in criminal case does not create any embargo on the departmental inquiry. In the circumstances I hold that though the workman is acquitted in the kidnapping and rape case, does not extend much help to the workman. On the other hand the judgment of the Sessions Court Case no. 1437/1997 is on record with list Ex-U-4. The copy of judgment is at Ex-9. After perusing the judgment, it is revealed that the Ld. Additional Sessions Judge has acquitted the accused/workman as the prosecution witness/victim girl therein who was the complainant did not come before the court who was the main witness. Her grand mother has deposed in that case. She contended that as the victim girl got married and at the time of trial she was residing with her husband happily. Her husband was not knowing about the case and they do not want to call the victim to depose in the court as they apprehend it may disturb her matrimonial relations with her husband. As the victim girl got married and was staying with her husband she could not come before court. Therefore the Additional Sessions Judge acquitted the accused as the victim girl who was main witness was not made available. The Ld. Judge has made specific averments to that effect in his judgment. Therefore this judgment cannot be said acquittal on merit.

14. The fact is not disputed that the second party workman was arrested by Police for the charges of kidnapping a minor girl and for committing rape on her. Therefore the workman could not attend his duties during the period he was in jail. The offence for which he was arrested was no doubt a serious offence relating to moral turpitude causing dis-reputation to the company for the act of their employee. MW-1 in his affidavit Ex-C-30 contended that the workman was charged for act of moral turpitude vide charge sheet dt. 01-03-1993. He has filed xerox copy of the FIR on record. He further says that the second party workman has committed offence U/ss. 363, 366 & 376 of IPC. He further says in his affidavit that second party was involved in the offence of kidnapping and committing rape on a minor girl and therefore he has committed serious misconduct of moral turpitude and the charge sheet for the same dt. 29-10-1992 is served on the workman which is entirely based on documentary evidence. This version is not denied or challenged in his cross-examination.

15. In respect of evidence of this witness Mr. B.H. Kale Ex-C-30, the Ld. Adv for the second party submitted that, in the Part-I award, the 3rd Labour Court Judge held that inquiry was not fair and proper. Thereafter the affidavit of the same witness Mr. Kale in the same manner was filed before this Tribunal in the fresh domestic inquiry. Therefore he submitted that the evidence of Mr. Kale is not material and cannot be relied upon. In support of his argument, the Ld. Adv. resorted to Apex Court ruling in Neeta Kaplish V/s. Presiding Officer, Labour Court & Anr. 1999 I CLR 219. In that matter the Labour Court held the domestic inquiry to be not fair and proper and management was called up on to lead evidence. The management did not lead any evidence except the record of domestic inquiry. In the absence of any fresh evidence by the management, appellant also did not lead any evidence. In the circumstances Hon'ble Apex Court held that:

> "Domestic inquiry having been held to be not fair and proper, evidence in domestic inquiry cannot be said to be material on record and appellant was entitled to be granted relief. "

With these observations, Hon'ble Court remanded the matter for fresh disposal.

In the case at hand affidavit of this witness Mr. B.H.Kale was filed subsequent to the Part-I Award. He has also produced the papers in inquiry proceeding

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with list Ex-C-5. In this respect I would like to point out that in Part-I award, inquiry was held not fair and proper as the Ld. 3rd Labour Court Judge held that, that the workman did not get proper opportunity to appoint defence representative of his choice and thus could not effectively cross examine the management witnesses. In the circumstances the other evidence in the inquiry proceedings can safely be referred and relied upon. In this case management has filed fresh affidavit of their witnesses and they were also offered for cross examination. Therefore it cannot be said that the same evidence of the witnesses was read in the second part inquiry. Thus the ratio laid down in the above ruling is not attracted to the set of facts of the present case.

16. Apart from the charge of misconduct of moral turpitude, the workman was also charged for unauthorized absence for a period of 69 days. MW-2, Rajkumar Chauhan has deposed at Ex-C-20. He says that the workman was charge-sheeted on 24-04-1989 for unauthorized absence and he was given warning by way of punishment for the said misconduct. He has proved the warning memo at Sr. no.8 with list Ex-C-5. He also further says in his affidavit that the workman was also served with chargesheet dtd. 11-12-1989 for habitual absence. In that case also warning was given to the workman. The said warning memo is proved at Sr. no.9 with list Ex-C-5. This witness though was present was not cross examined: From the evidence of this witness and the warning memo, it is revealed that the workman was also held guilty twice for habitual absence besides the third chargesheet dt. 29-10-1992.

17. In respect of the charge of unauthorized absence the Ld. Adv. for the second party has suggested in the cross examination of witness B.H. Kale Ex-C-30 that from time to time workman has given intimation in respect of his absence. Therefore he submitted that the allegation of unauthorized absence does not survive. In this respect the Ld. Adv. for the first party submitted that the suggestion was denied by witness Mr.Kale in his cross. He further submitted that even presuming for the sake of argument any such intimation was given in respect of his absence, it does not suffice the purpose. Even mere making an application for leave is not sufficient. In support of his argument the Ld. adv. resorted to Apex Court ruling in Mithilesh Singh V/s. Union of India & Ors. 2003 I CLR wherein the Hon'ble Court on the point observed that:

> "The mere making of a request of leave, which has not been accepted, is not a proper intimation."

18. In the circumstances it is clear that the workman was unauthorisedly absent for 69 days as he was arrested and detained in jail. The workman neither gave any intimation to the office nor has applied for leave. In short, from the evidence on record it is revealed that management has proved both the charges against the workman. Accordingly I decide this issue no.1 in the affirmative.

Issues nos.2 & 3 :—

19. The management has proved both the charges in the charge-sheets. The first charge was that of unauthorized absence for 69 days. Prior to this charge the workman was also charge- sheeted twice in the year 1989. Twice he was held guilty for unauthorized absence. MW-2, Mr. Rajkumar Chauhan has contended in his affidavit at Ex-C-20 about the earlier two charge-sheets and the fact of warning given to the workman on both these occasions. There is no cross examination of this witness and his evidence in respect of the earlier two charge-sheets and punishment of warning remained unchallenged. This is the third chargesheet of unauthorized absence. In the circumstance punishment of dismissal from service cannot be called shockingly disproportionate to the proved misconduct. In this respect Apex Court ruling can be resorted to in L & T Komatsu Ltd. V/s. N. Udaykumar 2008 I CLR 978 wherein the Hon'ble Court on the point of habitual absenteeism observed that;

> "It is well established that habitual absenteeism is gross violation of discipline."

The Hon'ble Court further observed that;

> "When the factual background is considered in the light of principles indicated, the inevitable conclusion is that the Labour Court and the High Court were not justified in directing reinstatement by interference with the order of termination. The orders are accordingly set aside. The order of termination as passed by the concerned authority stands restored."

20. In the light of the above ratio laid down by Apex Court it is clear that habitual absenteeism is sufficient ground to dismiss the workman from service. Therefore I hold that punishment of dismissal is not shockingly disproportionate.

21. In respect of the charge of moral turpitude, I would like to point out that the workman was involved in kidnapping and committing rape on a minor girl. Though he was acquitted, his acquittal is merely on technical

ground as victim girl did not come to depose before Sessions Court as she has got married and staying happily with her husband. Her relatives do not want to disturb her matrimonial relations by calling her in the Court. For want of evidence of the victim girl, the workman was acquitted. The said acquittal is not on merit. In the circumstances, the charge of misconduct relating to moral turpitude is also held proved which is also sufficient ground to dismiss the workman from the service and the punishment of dismissal cannot be said shockingly disproportionate. For misconduct also cannot be said shockingly disproportionate to the proved misconduct relating to moral turpitude. Accordingly I decide this issue no.2 in the negative. In this backdrop question of reinstatement of the workman or paying any back-wages to him does not arise. Accordingly I decide this issue no. 3 also in the negative and proceed to pass the following order:

ORDER

The reference stands rejected with no order as to cost.

Date: 10-08-2012

K.B. KATAKE, Presiding Officer

नई दिल्ली 17 अक्तूबर, 2012

का.आ.3386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-2, धनबाद के पंचाट (आईडी संख्या 72/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2012 को प्राप्त हुआ था।

[स. एल-20012/495/2000-आई आर (सी-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 17th October, 2012

S.O. 3386 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. 72/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, received by the Central Government on 17-10-2012.

[No. L-20012/495/2000-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 72 OF 2001.

PARTIES: Employer in relation to the management of Bhowra (N) O.C.P. OF M/s BCCL and their workman.

APPEARANCES:

On behalf of the workman: Mr. N.G. Arun, Rep. for the workman

On behalf of the Employer: Mr. B.N. Pd., Ld. Adv.,

State: Jharkhand Industry: Coal

Dated, Dhanbad, the 19th Sept., 2012

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/495/2000-IR(C-I) dt. 02-03-2001.

SCHEDULE

"Whether the demand of the RCMS from the management of BCCL, Bhowra (N) OCP for regularisation of Shri A.N. Jha, as Store Keeper is justified? If so, to what relief is the workman entitled and from what date?"

2. Neither N.G. Arun, the Union Representative for workman A.N. Jha nor Mr. B.N. Prasad, the Learned Advocate for the Management nor any M.W. produced in behalf of the management despite last chance. After going through the case record, I find that the evidence of the workman was already closed as per order dt. 3-5-2006 of this Tribunal because not a single witness for the workman was produced since 03-03-2006. The present reference relates to an issue about non regularization of workman as Store Keeper. If the Union Representative fails to discharge its own liability to prove in spite of giving ample opportunity, no need arises for the examination of any management witness.

Under these circumstances of the oldest case, proceeding with the case for infinity is unwarranted. Hence, the case is closed; and accordingly an award of no industrial dispute existent is passed.

KISHORI RAM, Presiding Officer

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